

MINUTES

The Town of Manteo Board of Commissioners held their Special December 7, 2022 meeting at 1:00 p.m. at 407 Budleigh Street, Manteo, NC.

The following members were present:

- Mayor Bobby Owens
- Mayor Pro-Tem Betty Selby
- Commissioner Tod Clissold
- Commissioner Eddie Mann (3:47 p.m.)
- Commissioner Sherry Wickstrom
- Commissioner Ruth Stetson

The following members were absent: Commissioner Darrell Collins

Also present at the meeting were:

- Town Manager Melissa Dickerson
- Town Attorney Ben Gallop
- Town Clerk Jamie Whitley

Mayor Bobby Owens called the meeting to order at 1:00 p.m. followed by a moment of silent meditation in Remembrance of Pearl Harbor.

Town Attorney Ben Gallop conducted a roll call.

QUASI-JUDICIAL HEARING

SUBJECT: Salt Meadow Landing Special Use Permit Application (Continued from August 3, 2022, September 7, 2022, October 5, 2022, and November 2, 2022.)

Mayor Owens turned the meeting over to Town Manager Melissa Dickerson.

Manager Dickerson: This is the continuation of the quasi-judicial hearing for the application for Salt Meadow Landing. She turned the meeting over to Attorney Gallop.

Attorney Gallop: I read through a pretty long spiel the last two times we've started this hearing so I'm not going to read through that whole spiel this time. Again, we are here for the quasi-judicial hearing for the Board to determine whether or not a special use permit (SUP) should be granted to Salt Meadow Landing OBX LLC. He stated that the board's not required but may make a final decision today. He reminded that the Board shall issue the requested special use permit unless they conclude based upon the information submitted at the hearing that:

- The requested permit is not within its jurisdiction, or
- The application is incomplete, or
- If completed as proposed in the application, the development will not comply with one or more of the requirements this ordinance.

The Board may also deny the special use permit, if granting it would not be in conformity with the town's land use plan or the latest guidelines for development or the proposed use will not be

compatible with the area in which it's located. In addition to meeting that those burdens of evidence, the applicant must provide substantial competent evidence that the proposed development meets the following standards in addition to the relevant dimensional standards under Section 9-2 of the Town zoning ordinance:

1. Maintain or enhance the public health, safety, and welfare;
2. Maintain or enhance the value of adjacent property or via public necessity;
3. Comply with the general intent of the B-3 zone for physical development of the area;
4. Contribute architecturally to the traditional village-like atmosphere of the historic town; and
5. Comply with all other regulations contained in this ordinance.

He gave a reminder that the Board, once it gets to the decision-making process, should not rely on any part of the preliminary before the Planning and Zoning Board or the recommendation of the Planning and Zoning Board as a basis for its decision. He stated that at the end, the Board may also attach to the SUP reasonable and appropriate conditions and safeguards.

The last two times we've gone through the concepts of whether or not any particular person has any conflicts or where they would not be viewed as an impartial decision-maker. He asked: Does anybody on the Board wish to raise any issues with that regard at this point?

Attorney Gallop: Seeing none. He continued by remembering where we were. He recalled that in August, we had continued the hearing to October. We were in the process of hearing from the applicant's witnesses. In October, we had a hearing based on standing with regard to certain neighbors of the proposed project. Standing was found to exist for those neighbors, they became a party, and then we resumed with the evidentiary hearing of the portion related to the applicant. He stated that he believes we remain in that portion. He asked Attorneys Crouse Gray and Andrew Petesch if that was their recollections. Both Attorney Gray and Attorney Petesch agreed that it was their recollection.

Attorney Gallop: Mr. Gray, I will give it back to you to bring forth your witnesses. Let's go ahead and swear everybody in while we're here in this early part so we don't have to do it piece meal. Anyone who's wishing to provide testimony today either with the applicant, with the neighbors, or as a member of the public if you'll come forward and meet with Mrs. Whitley over here, the Clerk. She will have you sworn in.

Town Clerk Jamie Whitley: Does everybody swear to tell the truth and nothing but the truth, so help me God?

The following stated I do and stated their names for the record:

- Andrew Petesch
- Johnnie Hennings
- John Anderson
- Greg Bourne
- Michael Strader
- Melissa Dickerson
- Jennifer Hamlin
- Lyle Overcash

- Sumit Gupta
- Crouse Gray

Clerk Jamie Whitley: Thank you all. Attorney Gallop, they have all been properly sworn.

Attorney Gallop: Thank you, Madam Clerk.

Attorney Crouse Gray: Mechanically, would you prefer that the witness simply sit here, or would you prefer that he go to the podium?

Attorney Gallop: Does anybody at the Board have any...

Commissioner Tod Clissold: I think at the table would be fine.

Commissioner Sherry Wickstrom: It's fine. (The consensus of the Board was that the witnesses sitting at the table would be fine.)

Attorney Gallop: You've got microphones at the table. Just make sure that everyone, who is testifying or speaking, just make sure you try and speak into the microphone so that we can ensure that it's recorded by the recording equipment.

Attorney Gray: I would call Mr. Greg Bourne. For the record, please state your name.

Mr. Gregory Bourne: Gregory Lee Bourne.

Attorney Gray: And where do you reside, sir?

Mr. Bourne: 4893 The Woods Road in Kitty Hawk.

Attorney Gray: How are you employed?

Mr. Bourne: I'm a self-employed real estate appraiser.

Attorney Gray: And how long have you been?

Attorney Petesch: Excuse me, Mr. Mayor. I need to object to the inclusion of this witness. I'd like to make that objection now. Have you heard on the objection?

Attorney Gallop: Yes.

Attorney Petesch: At the end of the last meeting, when the Commissioners were deciding whether to continue and in consultation with the attorneys, the idea of continuing that hearing on October 5th to a future date was raised, I expressed no objection. Mr. Gray, attorney for the applicant, did object and cited fairness issues with going forward with either completing his or my having an advantage of having heard his arguments, etc. I, then, at that point made the proffer of agreeing not to add any additional witnesses and to give him the names of my witnesses. Prior to that, Mr. Gray

indicated he had two more witnesses to present at that time. That was agreed to that the intent, as I understood it, was to hold exactly what had happened at that point up to that point and not for the cases to expand to use that time to expand either side's presentation and that's what I had agreed to and committed to in the process. I was notified last week that Mr. Gray intended to add a witness, an appraiser, to his list of witnesses after, at the October 5th meeting, we exchanged our witness names. I gave him the names of Mr. Hennings and Mr. Anderson. He gave me the names of Mr. Gupta and himself as their two witnesses. And so I would respectfully request that an additional witness be denied because it's outside of the agreement that was made at the end of the last meeting and ultimately, if it's allowed, allowing Mr. Gray to use this as a shield to prevent me from having any additional witnesses and a sword to bring in additional witnesses to bolster his case. So I would respectfully request that this witness not be allowed.

Attorney Gallop: Mr. Gray, do you have a response?

Attorney Gray: Oh yes. Yes, we did exchange names of witnesses. I do not remember it being a this is the only people we can call. I do have the right to present any witness that I wish to in order to provide information to this Board. I am not going to be calling Mr. Gupta. I simply substituted this gentleman so I'm not changing the number, I'm changing the name. Secondly, I did try and call opposing council over a month, almost a month and a half ago, I understand he had some health issues. He did not return my phone call. I wanted to advise at that point that it wasn't just a week ago. That's not accurate. We actually finally connected approximately a week ago but I called him twice before we actually pushed up on the third phone call. So, I respectfully submit I am entitled to put another person in to simply give the testimony that I was going to have Mr. Gupta to testify which is an evaluation issue.

Attorney Petesch: If I could respond briefly. The first call I received was a voicemail on the Friday before Thanksgiving, that was not a month and a half ago. It was another phone call and then I responded to that one after Thanksgiving. There was no email that was sent to me, none of the voicemails indicated that this was about a witness, and when we did speak, Mr. Gray indicated that the reason he was originally calling was about the traffic engineer but that he also later decided to include this real estate attorney. But I would say that this is prejudicial because given the two months that we would have had if this would have been something that was addressed right away that prejudice could have potentially been erased because we would have had an opportunity to at least bring in our own real estate expert that even if they didn't do an analysis could respond to their real estate expert. We have no ability to respond to this expert that they're that they are presenting today.

Attorney Gallop: Would having more time provide you with an ability to respond?

Attorney Petesch: I think that we would like to go forward today. I would just note that there is a prejudice there but this has gone on for quite a bit of time. I've made two trips now down to Manteo and again, it was Mr. Gray's advocacy at the last meeting to say they were completely prepared and that they wanted to finish at the last meeting.

Attorney Gallop: Anything else, Mr. Gray?

Attorney Gray: No, I made the presentation through the information that we wish to present to the Board.

Attorney Gallop: Mr. Mayor, this is your decision.

Mayor Owens: I thought you were going to run this show

Attorney Gallop: I'm going to give you a recommendation but you don't have to listen to me. I'm trying to think my way through that for a moment. Sometimes in court a judge like y'all are acting as a judicial body, we'll call somebody out on bad timing. They forgot to bring somebody, they forgot to call somebody, they didn't list somebody, but in court, there's also a discovery process. There's pre-trial hearing processes, pre-trial order processes, and people know ahead of time who is going to be involved and have the opportunity to address those people. In this case, we're dealing with a permit application, we're not dealing with a litigation that may have a level of judicial economy and some degree gamesmanship that's associated with it. I think that this is within your discretion, the decision to exclude or allow witnesses, a discretionary decision. I think in this case fairness would generally warrant the potential to exclude or to allow the witness and I think in that instance given that this is a permitting decision, I think that my recommendation would be to allow the witness, to let their testimony be heard, and if additionally in fairness, if Mr. Petesch and his client would like additional time to respond to that witness, that you consider granting them that time. I think that's the only way to ensure fairness in this proceeding ensure that everybody has their opportunity to be heard. I also believe that when in doubt about excluding or accepting evidence that the better answer is typically to accept to hear the evidence and see how that affects the decision of the board as long as there's no clear reason not to. And in this case, I do not believe there's a clear reason not to. So Mr. Mayor, my recommendation would be that you overruled the objection allow the testimony of Mr. Bourne and asked Mr. Petesch again whether or not he and his clients would like additional time to provide a witness. And if we end up going down that route, my recognition would also be that we really do come to a decision today that the party's list and that this Board says these are the only people who will be testifying at another hearing if we go down that path.

Mayor Owens: Let me ask you something.

Attorney Gallop: Yes sir.

Mayor Owens: Can I follow up with the Board?

Attorney Gallop: I think you can.

Mayor Owens: Some of you do know, some of you don't know, I do not have a vote. I'm the only mayor in Dare County that cannot vote. So, I'm going to poll the Board and get the response from them and whatever they say that's what we're going to do in all fairness to both groups. I want to be that way I want to be as fair as possible. I know you have to come a long way from Raleigh and it's getting to be boring as it is to me. This case should have been over quite some time ago and it's dragging on far too long in my opinion one way or the other I am not in it. I'm not committed so I'm

trying to be as fair as possible so I'm going to if you will poll the Board. I think Sherry wants something to say anyhow but we're going to poll the whole Board and give them something to say we've got to have that time so Sherry go ahead.

Commissioner Wickstrom: Yes. I wonder if there might be another solution since Mr. Gupta is in the field and that's who Mr. Gray was interested in having as a witness perhaps Mr. Gupta could then take the place of this new person. That does seem unfair to have when not all parties were able to add, it's just a thought.

Attorney Gallop: I don't want to speak for Mr. Gray but I suspect that if you did exclude Mr. Bourne that he would have Mr. Gupta testify to something whether or not they can testify to the same things is a complicated question that it would depend on what they're trying to testify to. They both have different roles.

Commissioner Wickstrom: But similar knowledge.

Attorney Gallop: Yeah. I'm trying to foresee what they would be providing testimony of and there are things that I would suspect that Mr. Gupta can testify to that Mr. Bourne could not legally and that Mr. Bourne could testify to that Mr. Gupta could not legally. And I believe my guess would be that Mr. Gray has something that he would like to use Mr. Bourne for that he's not sure that Mr. Gupta could provide. I'm not sure it would provide the resolution you think it would.

Mayor Owens: Tod.

Commissioner Clissold: My recollection was when the hearing ended last time recess that Mr. Gray was concerned that Mr. Petesch would have time to gain ground in other ways maybe with witnesses or whatever, so I personally I feel like the opposite was done. I know Mr. Gray had said he had tried to contact Mr. Petesch to present the new witness for testimony but to me I don't think it's fair because you've basically done what you were worried he was going to do for the process so I'm not quite sure. I understand that Mr. Bourne probably has some information that might enlighten us but I don't know if it would be in a way that would sway this Board in any way and I feel like Mr. Petesch deserved the heads up with this extra witness.

Mayor Owens: Okay. Betty.

Mayor Pro-Tem Selby: I do respect the opinion of our attorney but me personally because I don't feel its fair. It's been plenty of time.

Mayor Owens: Okay. Ruth Jane.

Commissioner Stetson: Is it common practice in quasi-junction hearings for witnesses to be added post continuation like this?

Attorney Gallop: Continuations aren't common practice enough to make a judgment as to whether or not that would be a common practice of a continuance. Unlike litigation like I said it's common

practice for it to be without any better term somewhat of a Wild West Ambush because you don't know who the witnesses are going to be you don't know what they're going to say presumably Mr. Petesch has a witness or two that Mr. Gray has no idea what they're going to say today so there's always in quasi-judicial hearings without a discovery process a bit of an ambush type situation. However, the fairness of that is that both sides are getting ambushed to some degree so again that's what y'all are talking about here is fairness and how does that fairness apply to both.

Commissioner Stetson I'd be reluctant to add a witness it just feels a little bizarre but I am not an attorney so if the Board wants to defer to the attorney then we'll do that if not, I think we sort of feel the same, all of us.

Mayor Owens: Are you in agreement?

Commissioner Stetson: with Tod, Betty and Sherry.

Mayor Owens: Okay. Seems to be four against that's the majority of Board.

Commissioner Clissold: Mr. Mayor, I would just like to get Betty's response I mean were you in favor of adding the witnesses?

Mayor Pro-Tem Selby: No.

Mayor Owens: I gathered that she said no.

Commissioner Clissold: Okay. I wasn't sure.

Mayor Owens: I got an A here for against. I was keeping score

Commissioner Clissold: Okay.

Mayor Owens: All right. It seems to be the majority of the Board is against any additional witnesses I guess that's what you call them I'm not a lawyer and so we will

Attorney Gallop: Overrule the objection.

Mayor Owens: Overrule the objection.

Attorney Gallop: So Mr. Gray, the chair overruled your objection.

(There was some confusion and multiple people started talking at once.)

Attorney Petesch: I think you meant to sustain the objection.

Attorney Gallop: Yes. I was thinking sustained in my head and I switched my head around to overrule but I'd already switched ahead of time so my fault.

Mayor Owens: Yeah. Well I have the against down there because they said that I gathered from this Board they did not want any more witnesses.

Attorney Gallop: I told you to overrule the objection based on that and I used the wrong term it should be sustained the objection.

Mayor Owens: All right. We sustained objection. Now, let's move on. Where do we go, Mr. attorney?

Attorney Gallop: Mr. Gray.

Attorney Gray: The evidentiary is still with me your honor. In that case, I will call Mr. Michael Strader, he's with Quibble and Associates. He's an associate of the prior engineer who was previously testifying was just a couple more points that I need the engineer to testify to sir.

Mayor Owens: Let me ask all of you please speak into the microphone we're having a hard time hearing up here it might be my age but I don't think so it's a little muffled so speak up if you will everybody.

Attorney Gray: State your name please.

Mr. Michael Strader: Michael Wayne Strader Jr.

Attorney Gray: How are you employed?

Mr. Strader: An engineer with Quibble and Associates.

Attorney Gray: How long have you been licensed as an engineer?

Mr. Strader: 17 years.

Attorney Gray: During that period of time, what is your primary focus as an engineer?

Mr. Strader: Civil site engineering residential/commercial.

Commissioner Clissold: Can you please...

Attorney Gray: Can you speak up just a little bit and speak closer to the microphone?

Mr. Strader: Sure. Residential/commercial site plan civil site plan engineering.

Attorney Gray: Can you give me an approximation of the number of development projects you've been involved in since you were licensed as an engineer?

Mr. Strader: I certainly could not tell you an exact number well over a hundred.

Attorney Gray: I would tender to him as an expert in design of site plan projects.

Attorney Petesch: No objection.

Attorney Gallop: Mr. Mayor. My recommendation would be that you accept the tender.

Mayor Owens: All right.

Attorney Gray: Were you involved in the design of the project that is here before this Board?

Mr. Strader: Yes, sir.

Attorney Gray: Prior to beginning the design of this project, did you review the code of the Town of Manteo?

Mr. Strader: Yes, sir.

Attorney Gray: Were there any point in time during your design process to get you spoke with any of the planning department or other people at the town if you had questions?

Mr. Strader: Absolutely. Yes, sir.

Attorney Gray: When you reviewed those plans and prepared the site plan they were submitted to the town in an initial application, correct?

Mr. Strader: That is correct.

Attorney Gray: The planning department of the Town made certain recommendations or suggestions, is that correct?

Mr. Strader: That is correct.

Attorney Gray: We are presently addressing a plan that is for 22 units, residential units correct?

Mr. Strader: 22 residential units of the mixed-use.

Attorney Gray: Right, mixed use. At the same time, that the original plan was submitted for 22 units was there further submitted a plan for 44 units?

Mr. Strader: There was an additional application for a total of 44 units.

Attorney Gray: The plan that is now before this Board, in your professional opinion, does it meet all of the code requirements of the Town of Manteo.

Mr. Strader: Yes, sir.

Attorney Gray: You testified that there was a plan for 44 units that was submitted contemporaneously is that correct?

Mr. Strader: Correct.

Attorney Gray: Did that plan to the best of your knowledge and memory meet all of the code requirements for the Town of Manteo?

Mr. Strader: Yes I did.

Attorney Gray: The 44-unit plan was ultimately withdrawn is that correct?

Mr. Strader: That is correct.

Attorney Gray: That's not before this Board right now the 22-unit plan is.

Mr. Strader: Correct.

Attorney Gray: But just to reiterate the 44-unit plan, did in fact meet all of the code requirements of this town best to your knowledge and memory?

Mr. Strader: Correct.

Attorney Gray: In 2006, to your knowledge, well let me back up and ask it this way. Have you reviewed prior plans that may have been submitted to the Town for other projects on this particular property?

Mr. Strader: Yes.

Attorney Gray: All right and Quibble and Associates did a plan that was submitted to the town in 2006, is that accurate?

Mr. Strader: That is.

Attorney Gray: That plan ultimately received a conditional use permit based on the records that you reviewed from Quibble and Associates, is that correct?

Mr. Strader: It did.

Attorney Gray: That plan called for there to be a total of 34 units, residential units, in the property is that correct?

Mr. Strader: It did.

Attorney Gray: I have copies of an unsigned copy of the special use permit that was issued in 2006. I am assuming the town has that in its records but if you need me to hand up copies of this to everyone I'll be happy to do so.

Attorney Gallop: Do you have any objection Mr. Petesch?

Attorney Petesch: My only objection would be to relevance.

Attorney Gallop: I would overrule the objection.

Mayor Owens: Okay. We will overrule the objection, move on.

Attorney Gallop: If you have copies.

Attorney Gray: I have copies but if you have them in your records, I don't want to waste time.

*(Attorney Gray handed copies of the unsigned special use permit to the Board of Commissioners and Attorney Petesch.)

Attorney Gray: And while I'm standing, I have a copy of a letter from the Town of Manteo saying that this letter is going to put the zoning compliance and preliminary commitment to provide water from the town for the 2006 project that I'd like to introduce into evidence as well.

*(Mr. Gray handed the letter to the Board of Commissioners and Attorney Petesch.)

Attorney Gray: The code in the Town of Manteo requires a certain amount of parking spaces for residential properties, is that correct?

Mr. Strader: Correct.

Attorney Gray: How many spaces does it require for a five-bedroom home?

Mr. Strader: For single-family dwellings, it's the number of bedrooms minus two. So, for a five-bedroom, it would be a minimum of three parking spaces required.

Attorney Gray: Is there a minimum number of parking spaces for a residence?

Mr. Strader: It is.

Attorney Gray: What is that minimum number?

Mr. Strader: It's a minimum of two parking spaces.

Attorney Gray: Does the plan that you assisted in drafting and designing that is now before these Commissioners in your professional opinion does that plan meet or exceed all town ordinances?

DEC 07 2022

56

Mr. Strader: It does meet

Attorney Gray: And to the best of your knowledge, does that plan and is that plan in conformity with the town land use plan?

Mr. Strader: It would be yes.

Attorney Gray: I have no further questions.

Attorney Gallop: Mr. Petesch?

Attorney Petesch: Just one. Mr. Strader, do you have a copy of sheet two of the drawn plans for this project that were submitted with the application?

Mr. Strader: Yes sir.

Attorney Petesch: Is it correct that on the notes number 15 addresses stormwater management?

Mr. Strader: Correct.

Attorney Petesch: And this stormwater management system is it correct that it is intended to capture the first inch of stormwater runoff in a storm?

Mr. Strader: Yes sir.

Attorney Petesch: Or perhaps what is provided is 1.02 inches, is that correct?

Mr. Strader: Correct.

Attorney Petesch: And that would be the first 1.02 inches in the storm.

Mr. Strader: Yes sir.

Attorney Petesch: That's all.

Attorney Gallop: Any redirect, Mr. Gray.

Attorney Gray: No, you're honor.

Attorney Gallop: Thank you for the elevation. I appreciate it but I'm not there. Do you have any more witnesses Mr. Gray?

Attorney Gray: Yes. I'm calling Mr. Sumit Gupta, please. Please state your name.

Mr. Sumit Gupta: Sumit Gupta.

Attorney Gray: Where do you reside sir?

Mr. Gupta: In Kitty Hawk, 108 Mill Point Road.

Attorney Gray: And are you a licensed real estate agent?

Mr. Gupta: Yes.

Attorney Gray: Are you a licensed real estate broker?

Mr. Gupta: Yes.

Attorney Gray: How long have you held those designations?

Mr. Gupta: About 20 years.

Attorney Gray: During that period of time, have you had opportunities to view properties and determine values of those properties?

Mr. Gupta: Yes.

Attorney Gray: Can you give this board an approximation of how many times you've had to do that?

Mr. Gupta: Hundreds.

Attorney Gray: When you are valuing a property that is immediately adjacent to a mixed-use development of both residential and commercial, how does the fact that that property is immediately adjacent to a mixed-use development impact its value?

Mr. Gupta: I haven't come across in the local area that has had a real impact.

Attorney Gallop: Just for my clarification, can you repeat his answer I didn't hear the last part of his answer.

Mr. Gupta: I have not seen an impact.

Attorney Gray: I would tender Mr. Gupta as an expert in valuation of properties for residential purposes.

Attorney Gallop: Any objection Mr. Petesch?

Attorney Petesch: No objection.

Attorney Gallop: I would accept the tender.

Attorney Gray: All right. Now turning your attention to the project that is before this Board

which is a mixed-use development project of residential units and commercial units, correct?

Mr. Gupta: Yes.

Attorney Gray: Do you have an opinion satisfactory to yourself as to whether this project will impact the value of any properties that adjoin it?

Mr. Gupta: I do not believe it will have impact the value.

Attorney Gray: Please answer any questions of Mr. Petesch and of the Board.

Attorney Gallop: Mr. Petesch?

Attorney Petesch: Mr. Gupta, do you have any written materials to support your opinion.

Mr. Gupta: I do not.

Attorney Petesch: Did you identify any comparison properties in determining your opinion?

Mr. Gupta: No.

Attorney Petesch: So, there was no methodology that was accepted in real estate appraisal or evaluation that you utilized in reaching this opinion?

Mr. Gupta: I'm not sure how to answer that. I had my own methodology. I'm not sure if it's would meet the criteria.

Attorney Petesch: Is there a name of that methodology?

Mr. Gupta: It's just using my experience.

Attorney Petesch: Am I correct in my understanding that when there's an appraisal done by North Carolina Certified Appraiser that they identify the methodology that they use in their valuation?

Attorney Gray: I'll object to the question because I did not understand it.

Attorney Gallop: I would sustain the objection.

Mayor Owens: Sustain the objection.

Attorney Petesch: Withdrawn. No further questions.

Attorney Gray: I have no further questions for this witness.

Attorney Gallop: Does the Board have any questions for Mr. Gupta? Thank you Mr. Gupta. Mr. Gray do you have any more witnesses?

Attorney Gray: I have no further witnesses at this time other than myself and concerning my closing arguments.

Attorney Gallop: Mr. Petesch, do you have witnesses?

Attorney Petesch: Yes. I'd like to call Johnny Hennings. Mr. Hennings, would you please state your name and address for the record?

Mr. Johnnie Hennings: My name is Johnny Paul Hennings and I reside in Taylor's Ridge Road in Wake Forest, North Carolina.

Attorney Petesch: How are you presently employed?

Mr. Hennings: I am employed with a company in Raleigh called Accident Reconstruction Analysis, PLLC.

Attorney Petesch: Is this an accurate copy of your resume?

Mr. Hennings: Yes, it is.

Attorney Petesch: I'd like to hand this up.

Attorney Gallop: Any objection, Mr. Gray?

Attorney Gray: Of him handing it up? No.

*(Attorney Petesch handed copies of Mr. Hennings resume to Attorney Gray and the Board of Commissioners.)

Attorney Petesch: Mr. Hennings, would you please tell the Board about your education, training, work experience with regard to traffic safety?

Mr. Hennings: Yes, so I graduated from NC State University in December of 1997 with a degree in mechanical engineering. Since April of 1996, I worked in the same capacity that I am at now at Accident Reconstruction which is a forensic engineering company. We are often tasked with determining how things happen, how accidents happen, fires explosions, I think metallurgical failures, things of that nature. Involved in that also is our process of testifying a little bit of civil criminal court proceedings as well as looking at insurance claims that may be fraudulent. With respect to my training, it is related to automobile accidents and how they happen and how they can be prevented in addition to that work what is common in my field is to have to analyze other people's work to critique it for potential errors or misrepresentations.

Attorney Petesch: I'd like to offer Mr. Hennings as an expert in the area of traffic accidents and traffic safety.

60

Attorney Gallop: Any objection, Mr. Gray?

Attorney Gray: No.

Attorney Petesch: Mr. Hennings, were you able to review the current application or the special use permit and the traffic impact analysis that accompanied it?

Mr. Hennings: I don't believe that I looked at the application but I did look at the traffic impact analysis.

Attorney Petesch: But you have seen the drawings, the proposed engineered drawings, for this either at the last hearing or today?

Mr. Hennings: Yes I have.

Attorney Petesch: And did you look at any other materials related to this application?

Mr. Hennings: Yes. I was provided some materials from Mr. Anderson who I suspect is going to be testifying after me. Some of those materials included a traffic impact memo that we just spoke about from Kimley Horn, a traffic study that was done in 2017 by AMT Consulting Engineers, the meeting agenda for here for the planning department, collision stats which was reportedly authored by Heather Reed with the NC Department of Public Safety, a Cushing traffic analysis reportedly authored by Colin Cushing and a Manteo traffic study takeaways that was authored by Mr. Anderson as well.

Attorney Petesch: And as a result of reviewing all those materials, did you prepare a written report?

Mr. Hennings: I did.

Attorney Petesch: And you have that copies of that that I can distribute?

Mr. Hennings: I do.

Attorney Petesch: While I'm handing these out perhaps you could go ahead and tell the Board about your analysis and findings.

*(Attorney Petesch handed a report prepared by Mr. Hennings to the Board of Commissioners.)

Mr. Hennings: Upon review of the traffic impact study that was done by Kimley Horn, I found some misrepresentations with respect to the length of the traffic queue at this intersection, the distance between the intersections within their analysis, they indicated that traffic queues would be between 300 and 400 feet and they indicated the distance between the intersections was 350 feet in actuality both measured by myself and digitally measured online the distance from the Stop Bar to the Russell Twiford Road is only 275 feet approximately and so therefore any of the backup queues that would exceed 275 feet would be blocking that intersection. So with that said the all of the

61

queues proposed by the Kimley Horn study of between 300 and 400 feet would be blocking the intersection of Russell Twiford .

Attorney Petesch: Do you have any visual aids that you could refer to?

Mr. Hennings: They are included in the report but I also have them I think already as pulled up as figure one on the screen.

Attorney Petesch: If you need to, you can take the microphone and walk up there.

Mr. Hennings: In figure one, what I've done here is taken and drawn a distance from the middle of Russell Twiford for 350 feet and it goes to the middle of the intersection so that is not representative of the queue distance from the stop bars further back to Russell Twiford Road. If you could move to figure two. In figure two, I used the same method to show that the distance from Russell Twiford to the stop bars is approximately 275 feet as opposed to the 350 feet that was mentioned before but it does show that if it's only 275 feet again as I was saying earlier a 300 foot queue is going to go beyond Russell Twiford and then 400 feet is going to be even further than that. Can go to the next one please? Figure three this show what a 400 foot queue would look like from the stop bar back up the US 64 and you can see there's approximately 125 feet or so of traffic that would be beyond Russell Twiford. Now one of the bigger concerns about this backup is really its safety. I think even in the Kimley Horn report, they noted that it was problematic to have these queues here. They proposed to block off an area to try to prevent traffic from blocking that intersection. However, if we could go to the next one, please, take out what would be here in the intersection you would still have to move that further back here for the total queue so not only so the concern here is we have potentially two lanes coming down to turn left and if one of these lanes backs up traffic may try to squeeze between here and there may be approaching traffic that they can't see it's shielded so it's a concern of safety when people are trying to cross through stopped traffic because of additional traffic that may be traveling at speed down US 64. So, what this represents if someone was stopped here this yellow cone is an area that would be completely blocked of them being able to see approaching traffic from the north.

Attorney Petesch: Based on this analysis, did you reach, in your professional opinion, a conclusion about the safety of what the T.I.A.(Traffic Impact Analysis) recommends in terms of improvements to Russell Twiford and to the 64 intersection.

Mr. Hennings: Yes. I have a few suggestions in the report of potential ways to alleviate this problem. One would be to signalize the intersection which would help if it's able to be signalized. Another would be to potentially add another turn lane so that the total queue is shorter than it would be with just two lanes. However, that would need to encompass adding a lane to 64 East towards town because it's only two lanes instead of three at that location. Another option would be to make a right turn only out of Russell Twiford but then we have to accommodate u-turns further up the road, I don't have a recommendation on any one of those. Those are just as suggestions as possibilities that could be explored for improving the traffic flow around Russell Twiford Road

Attorney Petesch: What was your opinion with respect to the existing plan recommendation and safety?

Mr. Hennings: Well again with the existing plan if we block off that section of intersection which is going to be roughly, I don't remember the dimensions, but maybe 40 feet or 50 feet of roadway that adds to the queue further to the north because we're not storing cars there also the difficulty is that if cars back up all the way to Russell Twiford it is difficult for cars to come out of Russell Twiford and get in the queue even if that section is open if we're trying to clear that section it's still difficult to get into the queue.

Mr. Petesch: One more question, were there any other anomalies that you were able to identify in the T.I.A. submitted by Kimley Horn?

Mr. Hennings: Yes. There were some mathematical anomalies in the traffic analysis more specifically I don't know if the board has the T.I.A. in front of them or has it available specifically on and I'll give two examples on page 13 which is figure 6A which is the projected AM traffic counts when we look at those traffic counts, we have vehicles coming up to and leaving the intersection of Russell Twiford heading south and in the traffic counts they have a total of 695 vehicles, however, down at the intersection there's no other way to get onto 64 below Russell Twiford down at the intersection. There's a total of 200 excuse me of 707 so the numbers don't add up as to the same number of vehicles entering 64 South at Russell Twiford as approaching the intersection with 64 and 64. similarly on page 14 which is figure 6B has a similar number they have a thousand and four southbound plus 41 that are turning left from Russell Twiford Road a total of 1045 however entering the intersection to the South is only a thousand and eleven so there are other examples of that but those are two that have pulled out where the numbers within their analysis just that don't add up to each other.

Attorney Petesch: Yeah. Thank you please make yourself available to Board and Mr. Gray's questions.

Attorney Gallop: Mr. Gray.

Attorney Gray: As Mr. Gallop has indicated to the Board. A lot of this is ambush. This is the first time I've had an opportunity to see or read or have anything and I frankly can't read this while he's talking. I have to listen to him so if I might with the Board's permission, I don't want to keep this thing going all day I'd like to be there in another hour at max if we can I know he's got other witnesses but I'm going to ask a couple of questions that I would respectfully request we take a break at any point in time I'd be given an opportunity to re-examine him should I find anything else because I will need to speak with our expert find out what he sees in this.

Attorney Gallop: Would you prefer to have a recess now rather than trying to do something later?

Attorney Gray: That's up to you and the Board.

Attorney Gallop: I wanted to get your preference.

Attorney Gray: I want to actually read this before I finish my cross-examination.

Attorney Gallop: I wanted to get your preference before I asked the board what their preference.

Attorney Gray: It doesn't matter to me whichever the Board wants to do is fine I want to move this thing along.

Attorney Gallop: The board have any interest in having a recess now so that Mr. Gray and his expert can consult and review a relatively lengthy report that was provided or would you prefer to have Mr. Gray ask a few questions and then if it comes up later give him the opportunity to raise more questions.

Attorney Gallop: How much time do you think it would take to review 10 minutes 15 minutes?

Attorney Gray: I'd say at least 15 minutes.

Commissioner Clissold: Would you rather continue or would you rather have a break?

Attorney Gray: To be fair, we would like to take 15 minutes but it is the decision on the Board.

Mayor Owens: We need to be fair. Mr. Gray needs time to read it and he hadn't had a chance to read and it has been plopped on him just now. It's very unfair to not give him a chance to read. I don't care how much time it takes or what but we got to be fair in this process

Attorney Gallop: Mr. Petesch.

Attorney Petesch: I only want to note that the report itself is only about five pages long and it makes clear I included in there the length is because all of those materials that he reviewed are included but the report makes very clear that the primary source for his analysis is their own T.I.A. which I've had for quite some time and they obviously have had so I don't believe it's as onerous as it may appear on first glance.

Attorney Gray: I will point out this and I'm not saying but he's had this at least, it's dated October 4th, two months and it's part of the people I understand.

Attorney Gallop: My recommendation is to go ahead and provide 15-minute recess it's better than piecemeal the process.

Mayor Owens: Should we do it now or later?

Attorney Gallop: My recommendation would be to do it now.

Mayor Owens: Okay let's go ahead and recess for 15 minutes.

The meeting recessed at 1:58 pm and reconvened at 2:19pm.

Mayor Owens: We are well over 15 minutes. It is all well and good. Maybe something good will come out of it, who knows. Here we go. We'll reconvene the quasi-judicial hearing.

Attorney Gallop: Thank you Mr. Mayor. Mr. Gray, it's with you on the cross-examination of Mr. Hennings.

Attorney Gray: I want to ask you a few questions if I might. First, I want to make sure I am absolutely clear and understand what your expertise is. Your expertise is an accident reconstruction analysis, is that correct?

Mr. Hennings: And determining how things fit.

Attorney Gray: But you're not a traffic engineer are you.

Mr. Hennings: I do not purport to be a traffic engineer.

Attorney Gray: But you have critiqued information from a traffic engineer, is that correct?

Mr. Hennings: I've looked at the analysis and found mathematical anomalies.

Attorney Gray: Now going to some of the points that you made. First off, let me look at, you attached as a part of this what appears to be an email from Mr. Petesch read as collision stats and it has attached there are two things about accidents that have occurred, is that correct?

Mr. Hennings: I did not assemble that document but I did see the one that you're speaking of.

Attorney Gray: It was provided to you?

Mr. Hennings: Correct.

Attorney Gray: Did you use that information for purposes of the analysis that you might have done?

Mr. Hennings: I don't recall that playing into the analysis that I've done.

Attorney Gray: Why'd you attach it?

Mr. Hennings: Once again, I didn't put this together but that was materials that was provided.

Attorney Gray: All right, well you're telling me, you didn't put this accident reconstruction analysis inc. report together that was dated October 4.

Mr. Hennings: I did put together the report document that I've signed. With the entire package is materials that I have but I did not physically staple these together.

Attorney Gray: Well, let me ask you what you did put in here. I see a letter that's a six-page letter at the beginning, is that correct?

Mr. Henning: The six-page report, yes.

Attorney Gray: All right and the next thing after that is AMT Consulting Engineers. See that sir?

Mr. Hennings: Yes, I do.

Attorney Gray: Did you attach this?

Mr. Hennings: I did not.

Attorney Gray: And then there's attached what appears to be something from A. Morton Thomas and Associates, Inc. Did you attach this?

Mr. Hennings: I did not.

Attorney Gray: So it's not part of your report?

Mr. Hennings: It's not. Those are the materials that I reviewed but it's not a part of my report.

Attorney Gray: Well, let me ask it this way, did the two documents I just mentioned to you being the AMT Consulting Engineers and the A Morton Thomas and Associates information have any bearing on your analysis that you made in your report?

Mr. Hennings: There was a reference to those as with respect to traffic numbers throughout the day as opposed to what was provided to me from Kimley Horn that only had traffic analysis in the morning in the afternoon. With respect to my concerns of public safety and options for alleviating that, those did not.

Attorney Gray: And I believe that we've already testified that email stream regarding accidents was also not attached by you.

Mr. Hennings: Again, it was a material that was provided to me for review but it did not have a bearing on my ultimate opinions.

Attorney Gray: Now, I noted in reviewing the actions that the specific intersection that you were testifying concerning which is Russell Twiford Road as it intersects, is not listed on here, did you obtain information from any source as to what amount of accidents have occurred in that particular intersection over any particular period of time?

Mr. Hennings: No. I did not.

Attorney Gray: Do you know how many houses have been constructed along Russell Twiford Road?

Mr. Henning: I do not.

66

Attorney Gray: Do you know how frequently the school building that is on Russell Twiford Road is presently open for use of students?

Mr. Hennings: I don't have account for that.

Attorney Gray: I have no further questions for this witness. He can answer any questions that the Board may have.

Attorney Gallop: Does the Board have any questions for Mr. Hennings? Thank you. Mr. Petesch next witness.

Attorney Petesch: If I could just clarify one point since I was the one that attached all of those exhibits to the report. I would ask Mr. Hennings if those are true copies to the best of your knowledge of the materials that you were provided and you reviewed?

Mr. Hennings: Yes.

Attorney Petesch: Those were included only as that to show the documents that were referenced in there. I just want to make that clear and then finally just to clarify, what was the primary document that you used in reaching your analysis and conclusions in your report?

Mr. Hennings: The primary document that I used was Kimley Horn's Traffic Impact Analysis.

Attorney Gallop: Do you have any other witnesses, Mr. Petesch.

Attorney Petesch: One more witness. I call John Anderson. I am going to ask Mr. Anderson to state his name and address for the record. While he's doing that I would ask, if I may approach and hand out his resume while he's doing that.

*(The Board agreed and Attorney Petesch handed out John Anderson's Resume to the Board of Commissioners and Attorney Gray.)

Mr. John Anderson: My name is John R. Anderson Jr. I reside most of the time at 1031 Harvey Street Raleigh North Carolina. Mr. Petesch, do you want me to go ahead and talk about my qualifications?

Attorney Petesch: Yes.

Mr. Anderson: Okay. So I was asked to appear here as an expert. I have a Bachelor's Degree in Soil Science I have a Master's Degree in Crop Science and Biochemistry. I have a Doctoral Degree of Agronomy and Plant Physiology and because I wanted to learn how to do cost benefit analysis in Environmental Studies, I have a MBA from the University of North Carolina. Over the course of my fairly lengthy career, I was a faculty member at North Carolina State University for 20 years. During that period, I am well published in the bird literature, avian if you will, but my primary job was to help farmers, large farmers, make decisions and much of that involves center pivot irrigation where I dealt with rainfall and runoff. I gave up that professorship in 1998 and went to Monsanto

Company as a Technology Development Director. I most of my work involved research on evaluating research for the economic and environmental effects of transgenic crops or genetically modified foods, if you will, and anything conservation related in North America at Monsanto came across my desk. So I've managed projects from Iowa to the Mississippi Delta to Eastern North Carolina looking primarily at non-point pollution or runoff from working lands and in that course of time I've seen a lot of different scenarios that deal with environment, wildlife, and natural resource management. Currently, I'm the founder and the Chief Technical Advisor for a startup company called Earth Optics. We use standoff sensors and artificial intelligence to make soil health decisions in near real time. That's my fourth startup, the first one involved a startup called Global Climate Analytics and I spent the most of this past November developing a project for the Virginia Department of Conservation and Recreation. It dealt with innovative methods to reduce sediment and nitrogen moving into the Chesapeake Bay.

Attorney Petesch: Just to add on to that extensive list of experience, education, work experience, training, could you speak specifically to your knowledge, training, education related to runoff and contaminants that are carried in runoff and that its impact on ecosystems.

Mr. Anderson: Well from an educational perspective, I have a number of certifications. I was a certified soil scientists, certified crop advisor. I went to NC State's Waste Management Institute Governor Hunt appointed me Conservationists At Large for the North Carolina Pesticide Board and a number of things like that. So I spend a lot of my time looking at nitrogen phosphorus sediment and other contaminants that come from non-point pollution and in that process you get a pretty good feel for what's point, what's non-point, what can be done to mitigate those kind of pollution scenarios and but again I was president of North Carolina Wildlife Federation for two years when they had 300,000 members and it was North Carolina's largest environmental organization so I am well versed in ecology and natural resource management movement of water across soil and those kind of things.

Attorney Petesch: I'd like to offer Mr. Anderson as an expert in environmental factors related to contamination related to runoff and stormwater in related ecosystems.

Attorney Gallop: Mr. Gray any objections?

Attorney Gray: I'm going to object to the term stormwater, other than that I have no problems. He is definitely an expert apparently on how runoff may impact waters.

Attorney Gallop: Do you have any...

Attorney Petesch: I would to the extent that I am not asking or going to ask or submitting that Mr. Anderson be admitted as an expert on stormwater management systems only the runoff that comes off of stormwater related systems. Is that something that you could talk about your knowledge?

Mr. Anderson: Yeah. So I'm a little bit confused about the term stormwater versus runoff. Depending on the scenario, they're the same thing and I know a lot about runoff. I know the difference between stormwater and runoff and as urban scenario is not much and so I will be glad to

68

testify to the environmental effects of pollutants from non-points and points as well as how they get there and what it takes to control.

Attorney Petesch: That would be our proffer.

Mayor Owens: I think he is qualified.

Attorney Gallop: You would accept the tender then.

Mayor Owens: Oh yeah. I will that.

Attorney Petesch: All right. Mr. Anderson, have you had an opportunity to review the application submitted by the applicant including the design drawings they submitted which include a stormwater plan?

Mr. Anderson: That is correct. I have.

Attorney Petesch: And are you familiar with the area, where this proposed project is planned?

Mr. Anderson: Yes, I am. I took the time to look at the National Web Soil Survey, which covers that piece of property. That property is a Leon Fine Sand. Manteo natives tell me that it's been infilled at some point or another time. It has a 0-to-12-inch water table. Therefore, it doesn't infiltrate water very well. It's subject by national classification standards, it has a high runoff rate.

Attorney Petesch: Did you prepare any writings related to your analysis?

Mr. Anderson: Yes. I was asked to look at the environmental impacts, the potential environmental impacts of the Salt Meadow Landing OBX development. I have a very short written opinion here and I'll be glad to share that. It comes in two parts, we didn't get it stapled exactly right so the first part is the written opinion and the second part is just a sample of the weather data that I use to come to part of that opinion.

Attorney Gallop: Mr. Gray, any objection to the tender of this?

Attorney Gray: Until I happen to read this and make sure it's compliant with his opinion, I don't have an objection but I do need to see that this conjunction with his expertise that's all I need to do.

*(Attorney Petesch handed out Mr. Anderson's written opinion to the Board of Commissioner and Attorney Gray.)

Attorney Petesch: Would you go ahead and tell the Board about your analysis and methodology?

Mr. Anderson: In the October 5th, first part of this quasi-judicial hearing, the site plan for this development was reviewed including the runoff management plan as Mr. Petesch and has been discussed earlier. The plan I looked at was interesting. It was developed to handle one inch of

69

runoff that means everything that precipitation wise that falls on that site other than what infiltrates through the ground. If you look at the density of this development, you look at the impervious surfaces, you look at how they are designed to move off of that property, then the real story is it handles 1.0 inches, it's designed to handle 1.02 inches of rainfall. If you go back and look at the long-term historical Manteo weather data and I went back to the last eight years 2015 through 2022 and basically if you look at all of that data then you have at least seven times a year in no particular month that rainfall exceeds the design for this development. What that means is you will have runoff particularly in a compacted soil side, a construction site, and that in that plan there is a pipe over very close to the Estuary that supports Shallowbag Bay. That's adjacent on the east side of this development and if the rainfall exceeds the capacity of that system and that pipe as by its design. It will necessarily runoff into that Estuary and have negative or adverse environmental effects. So back to the rainfall analysis of the range of rainfall events that have exceed the capacity of this system in a given year is 2 to 12. The mean or the typical times that it would exceed the capacity of the system at a given year is seven. There's no particular month where one is better than another. Typically have July 15th to August 15th is the wettest month of the year in Northeastern North Carolina and so my opinion is that given the density of this environment the fact that the runoff from this development goes to a pipe right next to a very environmentally sensitive Estuary where at least two threatened and endangered species have been observed and given that shellfishing is still allowed there then this development poses an environmental threat to that Estuary.

Attorney Petesch: What is it about runoff that prevents a threat? Is there something more than just water going into water, that is creating concern?

Mr. Anderson: Correct. If you look at the second paragraph of my opinion, and you already know that in a parking lot in residential areas, in commercial areas, that when water moves across that surface and moves off of that site and anything it picks up in that parking lot or in that residential area goes with it either as a solid on the sediment or solution. So if it can be in a development like this, it could be a solid or liquid waste discharge sediment from construction projects, debris, fertilizers, pesticides, the biggest pollutant is grease, oil, and heavy metals coming off of tires and cars. Can be motor oil, antifreeze, paint, bacteria from human and pet waste, and solvents, detergents etc. There's a long list of non-point potential contaminants that come off of environmental areas. They're well known to the EPA and I suspect, they're well known to you.

Attorney Petesch: Can you describe any of the adverse impacts that these contaminants would potentially cause or exacerbate in sensitive ecosystems?

Mr. Anderson: A sensitive ecosystem each of these contaminants can have different effects depending on the amount of rainfall, the concentration, how dry it is that time of year, a small rainfall exceeding the capacity the system, can deliver a very heavy dose of multiple contaminants to the wildlife. You already know from Shallowbag Bay, what these kinds of contaminants can do to shellfishing. that it eliminates recreational opportunities, but with respect to fisheries and wildlife, there's nothing good you can say about those kinds of contaminants in an estuary. They have multiple effects on food sources, food chains, reproductive rates all those kind of things.

Attorney Petesch: I have no further questions.

70

Attorney Gallop: Mr. Gray.

Attorney Gray: Just so that I may clarify something, you're not an expert on residential real property valuation, are you?

Mr. Anderson: I'm an expert on intellectual property values.

Attorney Gray: But that's not residential real property.

Mr. Anderson: That's correct.

Attorney Gray: You are not an expert on traffic studies, are you?

Mr. Anderson: I operate a big data company. We build predictive models based on any kind of data we look at. I can look at traffic studies and tell you where the problems are and where the solutions might be, it doesn't matter what kind of data it is. We're a data management company and I'm the chief Patent Officer.

Attorney Gray: You didn't answer my question. Are you personally an expert on traffic studies?

Mr. Anderson: No, sir.

Attorney Gray: Let's turn to stormwater. Are you familiar with the state requirements for a stormwater system for a project of this nature?

Mr. Anderson: I think I'm well read on the subject.

Attorney Gray: So, you understand what the state standards are?

Mr. Anderson: Yes.

Attorney Gray: Does this project, that's been submitted to this Board, meet those state standards?

Mr. Anderson: My understanding is that this project has a runoff management system that will handle one inch of rainfall. That's the capacity of the system. That's what I understand and that the state may certify that because your professional engineer said it was correct.

Attorney Gray: Well, you just testified that you're familiar with the state systems and the state requirements. I asked a simple question. Does this, in fact, meet state standards? It's a yes or no question.

Mr. Anderson: I suppose that it does.

Attorney Gray: Thank you.

Mr. Anderson: Can I add a comment to that? It may meet the state standard for the

typical development. It may not be appropriate for an environmentally sensitive area like this one. Since 2006 and 2022, that's been 16 years. A lot's been discovered about runoff management and in management that kind of thing. The density of this development doesn't allow for constructed wetlands and some creative solutions that might make that system more appropriate for an environmentally sensitive area like this one.

Attorney Gray: Have you gone personally to the state and had them change the ordinances?

(Attorney Gray and Mr. Anderson began talking over each other.)

Mr. Anderson: No I have not.

Attorney Gray: I noted on the accident reconstruction analysis that the previous witness testified concerning when it came to the last, not the last two pages because that's his qualifications. The two pages where it had basically the analysis at the top it says John Anderson.

Mr. Anderson: Yes.

Attorney Gray: Did you prepare this?

Mr. Anderson: As a data analysis, I was asked to look at that traffic study and I did. And if you'd like to maybe explain the flaws of it I can.

Attorney Gray: No, sir. What I asked you is, did you prepare this?

Mr. Anderson: Yes I did. Well let me see it to make sure. It has my name on it.

Attorney Gray: (Pointed to the document in question) Right there. So when the prior witness testified that these were his thoughts and substance, you provided this to him and they're your thoughts?

Mr. Anderson: No, sir. That's not correct.

Attorney Gray: It's your analysis. Is it your analysis, sir?

Mr. Anderson: Were you talking about those three pages of support?

Attorney Gray: Those pages. Those pages that have your name on the top. Three pages.

Mr. Anderson: Did I write that?

Attorney Gray: Yes!

Mr. Anderson: Yes, I did.

Attorney Gray: All right.

Mr. Anderson: It's not my report.

Attorney Gray: Thank you. You bought Lot 29 in Peninsula in 2004, is that correct?

Mr. Anderson: 2005.

Attorney Gray: Well, the deed is actually recorded 2004. Okay, that's immaterial.

Mr. Anderson: Right.

Attorney Gray: I apologize for that. At the time when you bought this lot was it already bulkheaded?

Mr. Anderson: No.

Attorney Gray: All right. Do you have, Melissa, do you have a Peninsula Subdivision Plat in your records?

Ms. Dickerson: I can get GIS up.

Attorney Gray: It's all right, it's all right.

Ms. Dickerson: But I don't have the subdivision plat.

Attorney Gray: That's right. I may continue to ask questions while I wander around. I've handed you what I assert is in fact the subdivision plat for the Peninsula.

*(Attorney Gray handed out copies of the Peninsula Subdivision Plat to Mr. Anderson and the Board of Commissioners.)

Attorney Gray: Do you recognize that, sir?

Mr. Anderson: Are you talking to me?

Attorney Gray: Yes, sir I am.

Mr. Anderson: Yes, sir I do.

Attorney Gray: All right and you're the owner of what you testified to earlier, Lot 29, correct?

Mr. Anderson: Lot 29 133 Launch Circle.

Attorney Gray: All right, sir. As I understand it, the home was constructed on that property and approximately 2008 to 2009 time frame, not exactly, ballpark.

Mr. Anderson: Yes. Could I have just a minute to confer with Mr. Petesch about something?

Attorney Gray: That's up to the Board.

Mr. Anderson: It's just I think Mr. Gray is conflicted on that question because he was involved in a litigation that involved that lot.

Attorney Gallop: Let's have you talked with Mr. Petesch.

Mr. Anderson: Okay.

Attorney Gallop: I'm not sure.

Attorney Petesch: I am curious about the relevance of the line of questioning that Mr. Gray is going on. So perhaps he could clarify what the relevance is of these questions to what Mr. Anderson's testimony was. It appears it's straying somewhat outside of the scope of it.

Attorney Gray: Relevance will be stormwater.

Attorney Petesch: As long as it remains related to stormwater, I don't have an objection.

Attorney Gallop: I would overrule his objection.

Mayor Owens: Yeah. Overruled. That's what we're talking about.

Attorney Petesch: I would also like to clarify that Mr. Anderson has a hearing aid and so it is not combativeness if you could occasionally speak up, it's only that he can't hear you that he is sometimes asking you a question.

Attorney Gray: I understand thoroughly, sir. I have the same problem.

Mr. Anderson: Yes, sir. I understand.

Attorney Gray: When you built your house, you previously testified, there was no bulkhead. You had a bulkhead put in, is that correct?

Mr. Anderson: Yes, sir.

Attorney Gray: And you backfilled behind that bulkhead?

Mr. Anderson: I think that's correct.

Attorney Gray: As I understand it, there are 34 lots within this subdivision that you own in, is that correct?

Mr. Anderson gave a slight nod in the affirmative.

74

Attorney Gray: When I look at the GIS plat, there's a walkway around all 34 lots, a private walkway.

Mr. Anderson: Right.

Attorney Gray: Now and it looks to me like it's designed so that every lot owner can have a boat.

Mr. Anderson: That's supposed to be the case. There's one of those 34 lots that does not have a boat space.

Attorney Gray: Okay. When we have a rain event, like you testified, occurs, which way does the water run off your property?

Mr. Anderson: Water runs off my property into a French drain that goes back to my backyard.

Attorney Gray: And at your backyard, where does it go to?

Mr. Anderson: I assume that it goes through a dirt filter there that we backfilled like you're supposed to do and goes to that canal. The reason for that drain is the stormwater that accumulated in and out of that entire cul-de-sac.

Attorney Gray: The cul-de-sac in front of your particular property, is that correct?

Mr. Anderson: (Did not hear the question.) I'm sorry?

Attorney Gray: The cul-de-sac that you just testified to, the cul-de-sac that your house is located on.

Mr. Anderson: Yeah, it's Launch Circle.

Attorney Gray: Okay, as my view of the aerial photos, indicates to me, that there are approximately 19 houses built in that subdivision.

Mr. Anderson: I think there's more than that. I don't think that it's closer to... I don't know the exact number but I'm thinking, it's closer to 23 or 24.

Attorney Gray: It could be, I don't know, how old the Dare County maps are at this time of the area.

Mr. Anderson: Oh it's relative to the GIS map that's currently in Dare County. There's many more houses than are shown.

Attorney Gray: Okay. Do each of them have a drain system, if, comparable to the one that you just did testified to having?

Mr. Anderson: No because the gentleman that bulkhead in my lot, made an error and he had to go back in and backfill it in order to meet the wetland criteria. Let me add to that answer that the reason it was bulkheaded. I was the very first person to bulkhead in that development because runoff erodes and it was causing lots after lots to erode so badly from that area that if I had continued to let it happen I wouldn't been able to rebuild my house.

Attorney Gray: And you basically began your testimony that you mostly reside in Raleigh, is that correct?

Mr. Anderson: I used to say I lived in Manteo on the weekends but since I've gone back to work after having retired three times already. I don't get here as often as I would like to but I understand the town pretty well over the course of the last two to three years.

Attorney Gray: I have no further questions. Please answer any questions that the board has.

Attorney Gallop: Does the Board have any questions for Mr. Anderson?

Commissioner Stetson: So have you familiarized yourself with our land use plan?

Mr. Anderson: What plan?

Commissioner Stetson: The land use plan.

Mr. Anderson: Yeah. I've read that in the updates.

Commissioner Stetson: Okay, so in general, would you say that development near an estuary like that would damage the estuary of any kind of a development?

Mr. Anderson: Any kind of development near an estuary has an effect. What I would have suggested in my written opinion, is the density of this development magnifies that effect. It's exact close proximity to that estuary, and sure, in the way that runoff system is designed ensures that several times a year probably at least seven that estuary will receive the dose of water that contains contaminants from that development. The real question here is the density. Single-family homes are one thing. 22 residents, 131 parking places and 38,000 feet of commercial space on 3.06 acres is something different.

Commissioner Clissold: Do you think the Peninsula was based on the state?

Mr. Anderson: (He did not hear the question.) Sir, I'm so sorry.

Commissioner Clissold: That's fine. Do you believe that the development of the Peninsula was based on the same criteria as Salt Meadow on runoff?

Mr. Anderson: I don't know that. It could have been but I do know that the density and the impervious surfaces were different.

76

Commissioner Clissold: So I guess what I'm asking, I mean, is the Peninsula design for 1.2 inches as well?

Mr. Anderson: Well, in the peninsula subdivision, a lot of resources have been expended to control stormwater and that area because of the soil type and the infill I suppose and the construction it doesn't infiltrate very rapidly. Runoff is above normal I would say and so you know you have to consider these things. The town of Manteo as I've studied your land use plan has professed forever and I believe the planning board has a little card in front of them at each meeting that says you want to restore shellfishing in Shallowbag Bay. This property that we're talking about is a riparian buffer between Manteo and the estuary that nurses Shallowbag Bay. If you want to put something that dense that close to an estuary that nurses something so important to the Town of Manteo, why would you do something this dense? That's your decision.

Commissioner Stetson: Are there intentions for maintaining the grounds, are there intentions to use traditional methods, modern methods like glyphosate?

Attorney Gallop: Commissioner Stetson.

Commissioner Stetson: Yes.

Attorney Gallop: The only questions now need to go just to Mr. Anderson.

Mr. Anderson: I know a lot about glyphosate. Go ahead.

Commissioner Stetson: My question would be with square footage with this area, at what rate if this is, I mean this, there's a lot of mathematicians here, is there a critical tipping point for that estuary due to its location with spraying glyphosate in a large area like that.

Mr. Anderson: You're talking about the total daily maximum load. I know what those are for the Chesapeake Bay. I do not know what it is for that estuary.

Commissioner Stetson: Okay. Thank you.

Attorney Gallop: Any further questions for Mr. Anderson?

Commissioner Stetson: In your experience, are there alternate runoff water treatment options for an area of the size?

Mr. Anderson: I've already testified I'm not an engineer.

Commissioner Stetson: Right.

Mr. Anderson: If you look across the solutions that people are using for mixed use developments in environmentally sensitive and interesting places, they have underground treatment. The water table here probably prevents that. They have constructed wetlands that Manteo already has

experience with, the old shopping center turned into a constructed wetlands but the density of this development leaves no opportunity to construct a wetland.

Attorney Gray: I have one other question.

Attorney Gallop: Yes, sir.

Attorney Gray: Your home is a five-bedroom home, is that correct?

Mr. Anderson: I stopped counting. I think so.

Attorney Gray: The Dare County records indicate that it is.

Mr. Anderson: Okay, that's fine.

Attorney Gray: Sometimes that's not accurate.

Mr. Anderson: It's not more than that.

Attorney Gray: I don't ever claim that Dare County records are accurate when it comes to the planning department.

Mr. Anderson: I have three on the second floor, one on the top. So, I guess it is four and most of the time there is no one on the second floor.

Attorney Gallop: Mr. Petesch, do you have any further questions?

Attorney Petesch: I have no more questions.

Attorney Gallop: Mr. Petesch, do you have any further witnesses?

Attorney Petesch: No further witnesses. I have no more testimonial evidence to present.

Attorney Gallop: Thank you. Mr. Gray, do you have any rebuttal testimony that you would like to present?

Attorney Gray: Yes, sir I would. Obviously, I'm going to ask our traffic engineer to address the issues raised by the testimony of the prior two witnesses.

Mr. Lyly Overcash: Good afternoon. Lyle Overcash with Kimley Horn. So I guess, the traffic study, we scope the traffic study with NCDOT (North Carolina Department of Transportation) and the town. As mentioned in my qualifications, I've performed hundreds and hundreds of T.I.As across the state so we performed the T.I.A. at typical traffic impact analysis. We did typical practice in performing traffic impact studies our studies are prepared in accordance with guidelines from NCDOT congestion management guidelines some pre-qualified with NCDOT for performing traffic studies. So the way we perform traffic studies, Mr. Hennings noted the distances between the

intersections. He is correct. Those are node to node distances. That's how we always note that on our figures and our analysis.

Attorney Gray: What's a node?

Mr. Overcash: A node is the center of the intersection. Mr. Hennings had shown a graphic showing the distance from the center of the intersection to the center of our intersection. Our traffic study acknowledges that the Russell Twiford intersection is often blocked throughout the day AM and PM peak hours. More in the afternoon peak hours but we also know that the signal operates at a level service C which is a good level of service and that southbound queue typically queues out or clears out during each cycle. Resulting in folks who have to wait probably for a cycle and then they're able to turn left out of Russell Twiford. We analyzed AM and PM peak hours in our traffic study which is also typical. Typically, what you would do is count for two hours in the morning and the afternoon which is seven to nine four to six and then, you pick, the software picks the peak hour volume of the intersection based on 15-minute increments and so each intersection could have a slightly different peak hour and so one intersection may have a peak hour that starts at 7:15. The other intersection may have a peak hours starts at 7:30. So usually we use the peak hour of each intersection to be the most conservative analysis. So sometimes, you will see volume imbalances between your sections and that's okay for traffic studies. That's again typical practice if you have some volume imbalances between intersections so long they're not major. I think Mr. Hennings just noted some small differences between multiple intersections it doesn't impact the analysis in fact the results at the intersections are reporting the worst case because they are the peak hour of that intersection. Our project adds about 10 to 15 left-turning vehicles per peak hour, so if you can imagine over an hour or 10 cars, that's one every five to ten minutes that comes up to the intersection and we turn left at Russell Twiford. Again, we recommended the restriping of Russell Twiford to allow for separate left and right turn lanes. This will help the right turners bypass those folks who have to wait in the left turn lane for the queue to clear from the traffic signal. And again the difference in the results at the traffic signal are virtually the same. It's only a couple seconds of extra delay between the existing and build-out conditions maybe an extra car queue length on the southbound approach. So we have very little impact to the actual intersection of 345 and US 64.

Attorney Gray: The average delay, I think, indicated with the improvements and construction of this facility, will be approximately two to three seconds additional delay, is that correct on Russell Twiford Road, actually?

Mr. Overcash: No, actually with our improvements our average delay in the afternoon which is the worst, was about 26 seconds and the background conditions it's about 23 seconds so just a couple seconds extra delay.

Attorney Gray: Say that again to me because I lost you on that one.

Mr. Overcash: So in the background conditions at an uncivilized intersection, we just measured the westbound approach which is the stop approach. So we add our traffic volumes, we do the restriping and then we compare our delay to what it was in the background conditions. So the background conditions are the existing conditions plus background growth and so that we grow the traffic volumes of the building area and that becomes the background conditions. So in the

background conditions, the worst peak hours, the afternoon, that would be 23 seconds in the background and with our development it would be 26 seconds.

Attorney Gray: So again, three second delay.

Mr. Overcash: Three additional seconds on everything.

Attorney Gray: We've talked about Russell Twiford Road. This development project has been accessing directly to 64, does it not.

Mr. Overcash: Yes, this project proposes a right in right out on US 64.

Attorney Gray: Some traffic may be using that particular access.

Mr. Lyle Overcash: Correct.

Attorney Gray: I have no more questions.

Attorney Gallop: Mr. Petesch.

Attorney Gray: Oh I apologize. He does have more witness testimony.

Attorney Gallop: That's fine. Let him testify.

Mr. Overcash: I'm sorry. Our firm is pre-qualified also with NCDOT to do safety analysis and so we pull the actual safety statistics for the intersection of Russell Twiford at US 64. Mr. Hennings data did not address the actual accident statistics at the intersection so over a five-year period, stretching from October of 17 through September of 22, there were 10 accidents at Russell Twiford and US 64. There were no injury accidents. They were all property damage only, so they were pretty minor accidents. So it averages out about two accidents per year. The majority of the accidents involve folks turning left out of Russell Twiford and they're impacted by someone coming south on US 64. There was no other traffic pattern that we noted not a specific month, not a specific day of the week, not specific time of day, not a specific weather pattern, or anything. It was kind of a little bit more random it's just someone probably becoming impatient and making a bad judgment.

Attorney Gallop: Mr. Petesch.

Attorney Petesch: No questions.

Attorney Gallop: Anybody from the Board have any questions?

Commissioner Wickstrom: I seem to recall that the Department of Transportation was going to review your traffic impact study

Mr. Overcash: Yes.

80

Commissioner Wickstrom: I think they were going to review it, if the additional volume could be accommodated, right?

Mr. Overcash: Yes.

Commissioner Wickstrom: That seems to be an important piece of this conversation. Where is that response from the Department of Transportation so that we can know what those experts had to say?

Mr. Overcash: So NCDOT, I spoke with the Division Engineer, I spoke with the District Engineer Assistant District, they got together this past Friday, even though our traffic study was submitted back in September. They had a lot of input from the public and then with this development, they heard complaints about Russell Twiford and US 64 and so, they wanted to take a look. They got together and discussed it and I talked to Caitlin Spear yesterday and kind of reviewed what they kind of concluded. They were not able to issue a letter prior to this hearing. I asked if they could get the letter but I sent Caitlyn an email last night kind of summarizing our discussion so it kind of included that DOT is okay with the re-striping of Russell Twiford. Their only comment there was to pay attention to the parking from the business on the corner which, I think, is a custom home company construction company. They are perpendicular along that area of Russell Twiford and sometimes they kind of hang out into the road. So, they didn't want the right turn laying to kind of overlap with the area that folks are parking and kind of hanging out in the road. Which when we kind of prepared kind of the original plan, we were thinking about 100-foot taper to kind of get us pass that area of where they park and kind of extend out to the road. That would be something we'll take a closer look at when we survey and prepare a striping plan for that intersection. So, that was the main comment revolving there. They were not in favor of the do not block intersection striping. We had included that as a suggestion for NCDOT to consider. Mr. Hennings also referenced that. There was multiple lanes and the southbound cycle of the signal and that southbound approach clears. They didn't think it was necessary to have that striped out box and they also did not want someone to leave a gap in one lane and then be hit by someone coming in the other lane. So they good had some good points there and so that was a soft kind of suggestion that we have in the traffic study, it was not a hard and firm recommendation. So DOT did what we asked and they considered it and they said no and we're okay with that. They were in support of the right in right out on US 64 as shown on the site plan and that was a driveway access that was shown in the previous plan. That had a driveway permit previously so that's not too surprising. They also were considering how and to reduce the volume on Russell Twiford. I think Mr. Hennings had a few suggestions. The most obvious one is do you restrict Russell Twiford to right in right out but the problem is sending someone somewhere to U-turn. So, we don't have a great spot for them to U-turn upstream. Your at the next intersection down where the lanes kind of add and drop there. It's kind of a bad spot to add a U-turn so it's a difficult place to put in a U-turn. They commented on the College of Albemarle (COA). Could switch over to the GIS real quick? I have to stand up real quick. (Mr. Overcash stood up and approached the smartboard.) Yeah I don't know if this is a right of way or something right beside them but they mentioned that could be reconnected. I don't know what they plans are for this building, it is closed right now. We timed our counts for when at the College of the Albemarle is back in session but this facility was not operational but we did include some dummy volumes in our analysis with this driveway for additional trips. But they were trying to figure out like if this could be connected because maybe I don't think this is going to be

redeveloped but they will use that building. That's something for the town, I would say in the future, for the town to considered a connection to be punched through there with that if that site is redeveloped. That was one suggestion we're talking about converting that to a right in right out. The best place is if you u-turn here but then this is a very sensitive area. So it's just a very difficult because it gets wet in this area and that's the problem with a lot of area here. Yeah I would say that's a problem in this area is you have a lot of wetlands. The other option how do you handle the left turns. Ideally, we would have folks turn right and come down here and make a U-turn but again you have a wetland here in this corner that's kind of the typical thing that we would look at. So, another suggestion that they said was could this be a become a full movement, so could we allow left turns coming out of the development and just be able to turn and go to the beach without having to go up turn left make two lefts. So, we did a quick analysis sent that to DOT last night quite late actually and just kind of ran. We took the 25 percent of the volumes that we had assigned to the beach and just had them come out and take a left so that's the 10 to 15 extra left turns that we had here and we just assigned them here and it works okay, it works as a level service D in the afternoon so that's a possibility. They asked about the left turn that goes to Wanchese, I think I'm pronouncing that correctly, and it only queues up a couple hundred feet. So you've got plenty of left turn lane here where you could carve a left turn lane in to come into the development. So, you could have a full movement intersection here with a left in left out and it would operate okay. That would also give the folks on the Peninsula kind of another way out but again DOT hasn't ruled fondly on this. They haven't issued their letter. Unfortunately, we didn't have it before the hearing but again they were they were fine. Here at Russell Twiford, the folks that park kind of in this area, they we would envision like a taper that comes down to here and then the storage is for the right turn line there. So that's just one thing we would have to pay attention to when we did the striping plan. (Mr. Overcash returned to his seat.)

Commissioner Wickstrom: I appreciate you sharing that information with us. I have to say I do feel uncomfortable not having the actual report from them because there are a lot of different scenarios that you've thrown out as a possible remedies for adding this larger project.

Mr. Overcash: Yeah. Those are alternatives that need to be considered for the future. I think as far as just how this development goes they're good with the re-striping Russell Twiford, they're good with our access as proposed on 64. Could that become a full movement as we go through permits with NCDOT, it's possible, and that would help relieve some of the left turn queues or delays on Russell Twiford.

Attorney Petesch: I do I want to ensure that Commissioner Wickstrom got a response to that question. But for the record, I want to object to Mr. Overcash's testimony making representations to NCDOT's position as hearsay.

Attorney Gallop: Mr. Gray.

Attorney Gray: This is in fact a quasi-judicial proceeding and the rules of evidence do not apply so everything he stated should be allowed in the record.

Attorney Petesch: I disagree as to whether the rules of evidence apply.

Attorney Gallop: I would overrule the objection on the basis that the testimonies already come in so the objection to letting it in is not well timed. This was not an objection or motion to strike the testimony so I would overrule the objection.

Mayor Owens: Alright. Overruled.

Attorney Gray: I don't have any other witnesses to call on. The applicant rest.

Attorney Gallop: Do you have any further questions or witnesses Mr. Petesch?

Attorney Petesch: One question for Mr. Overcash. I believe I heard you just say that for the College of the Albemarle, you did include what you referred to as dummy numbers for potential additional trips that the use of that property would create in your calculations, is that true?

Mr. Overcash: Yes, it's typical practice for when we do congestion management for DOT where we have a zero volume, we will insert a number four into the synchro analysis and that tells the reviewer that that volume was actually zero and that is kind of a dummy number but it's to generate results from the capacity analysis.

Attorney Petesch: All right. I just want to note for the record that at the October 5th meeting I have the minutes from that meeting that were approved on November 2nd. I asked specifically Mr. Overcash at that time did you take into account as I looked at the scenarios it did not appear that you took into account other developments along Russell Twiford that we're not currently active but that could be active one would be the College of the Albemarle and that is certainly going to be back online at some point. Mr. Overcash responded.

*(Attorney Petesch gave the copy of the October 5th minutes to Mr. Overcash to read his response from the question that he was asked on October 5th.)

Mr. Overcash: We use a one percent background growth rate to accommodate things that may happen in the study area that we're not specifically accounted for. Yes, when we did the traffic counts, we observed there was no traffic coming out of that driveway.

Attorney Petesch: Then I asked a follow up to clarify. Could you read that follow-up?

Mr. Overcash: But you did not specifically add on for future use of that it just fell into the general one percent. That's correct and it's still correct. We didn't know what the repurpose of that building, if that building would come back online, so we didn't have any of that information that was not provided to us during our scoping of the traffic study. I can't predict exactly the volumes that would come out of there.

Attorney Petesch: It's either part of a general one percent or is it specific four trips per day coming out of the college that you added. Which one is it?

Mr. Overcash: It's both.

Attorney Petesch: Okay

Attorney Gallop: Any further questions?

Commissioner Clissold: Mr. Overcash. I'm just curious with your firm, have you ever miscalculated any of your TIA studies? Did they ever come back incorrect?

Mr. Overcash: Absolutely.

Commissioner Clissold: All right.

Mr. Overcash: Yeah. Absolutely yes.

Commissioner Clissold: What were the steps in place to correct those? If you gave this audience a traffic study and nine months down the road the family gets killed at the intersection and another analysis is done and they say Mr. Overcash's numbers were way off. I mean, how does that come back to you as you being a professional person in this, telling this body of people that they do not feel that that intersection will be a danger with the added density of this development?

Mr. Overcash: As I mentioned, we're adding about 10 to 15 left turns during the peak hours. We went back and pulled the intersection statistics for the last five years and 10 accidents over five years, someone may look at that and say well that's a lot. Someone may say well if you drive up and down US 64 through Manteo with 18 to 20,000 cars a day. You go to most intersections where there's some volume, you're going to probably have a couple of accidents every year all up and down that stretch. So, you may look at that and say well that's kind of typical of what's going on this corridor. Then you look at the accidents, is there a pattern? The left turn is obviously the pattern problem. Are they severe? No, the accidents have not been severe, that have not involved injuries. So based on the data, you would say well then it's probably okay to add another 10 to 15 cars to that intersection.

Commissioner Clissold: In my personal opinion and I think this Board and I think pretty much everybody in this room knows that somewhere down the road. I think sooner than later regardless of what we do with Russell Twiford, there has to be an alternative to that intersection because all of us that live here, you can listen to all these statistics, you can hear whatever you want to hear, but anybody that comes to Manteo, it's a bad intersection. I think it'll be up to this Board and the planning department to work with DOT to come up with a way that we don't have to spend two hours on deciding if the intersection is dangerous or not because I think we all come to the agreement that it is. So I hope that this Board in the next few months, can work with the bodies to be to come up with a way to, I mean in my brain, I've got a couple ideas but I think it needs to be addressed.

Mr. Overcash: May I add, I mean, it's a state road. It's an intersection of two state facilities, so DOT, at any point, if they deem it unsafe they can come in and restrict access to a right in right out. They can do that with any connection, they reserve that right. So, down the road if they want to, they can close it and send folks. It's just a matter of where do U-turn? It's just a difficult spot. You

have a lot of difficult spots where the water and the wetlands kind of prevent you from building these typical bulbs, which are fairly deep to be able to U-turn vehicles.

Commissioner Clissold: Let me ask you this, this is off the cuff, but if that right hand turning lane into Manteo was eliminated and it was just a four-way intersection, would that help, hurt, or indifferent?

Mr. Overcash: The right turn volume is quite heavy. It's six seven hundred cars per feet all throughout the day. So, that lane needs to continuously flow that would be a severe delay if you were to do anything to that that lane.

Attorney Gallop: Any other questions? You're done with your evidence, Mr. Petesch. You're done with your evidence, Mr. Gray. Mr. Petesch had asked earlier once we got to this point if the Board and Mr. Gray would be okay with the witnesses who are being paid by their clients to be here would be able to be excused. The only question for the board would be if you have if we get into deliberations and you want to reopen the evidence and ask somebody some questions if they're not here you won't be able to do that. I'm assuming Mr. Gray is fine with that and his client's fine with that and Mr. Petesch has already indicated he is but so I wanted to run that by the Board. Would you be willing to let the witnesses go who are here on the clock of their clients?

The consensus of the Board was that they would be fine with letting the witnesses go.

Attorney Gallop: Of course, the parties will be taking the risk that if you had questions later that they let their folks go then you won't be able to ask them. I think the Board is okay with you all allowing your witnesses to leave and the next thing we'll do is have arguments. I know you were going to go last Mr. Gray because you're the one with the burden of proof. Did you want to go first and last or just last?

Attorney Gray: Just last.

Attorney Gallop: Okay. So, we'll take just a second to let these folks leave or not leave and then Mr. Petesch you'll be up for your argument. Well actually let me do one more thing, do we have any members of the audience who are not parties who would like to testify? If you would like to testify, I would remind you that you need to testify to relevant facts as to whether or not the standards that are at issue are being met or not. It would not be an opportunity for you to air grievances or concerns that were not factual related to whether or not the determinations at issue here should pass. If I could see a raised hand if anybody was to testify.

Commissioner Wickstrom: Would it be for people that have standing?

Attorney Gallop: No. These would just be factual witnesses who have no right to question other witnesses. They would be questioned by the parties potentially and but they would just be providing factual evidence.

Commissioner Wickstrom: Are they sworn in?

Attorney Gallop: Yes, but seeing no hands, it doesn't seem to be an issue. So, we'll move on from that. Mr. Petesch, are you prepared for your closing?

Attorney Petesch: Yes. Thank you for your patience. I will try to go through this as quickly as possible. I do want to note that within the Manteo Zoning Ordinance special use permit is defined. I would point out that it is a permit that requires that judgment and discretion be exercised. And that's a key role that you have here today, is an exercise in deciding whether to authorize a development. Special use itself is also defined and it states that a special use is a use that would not be appropriate generally or without restriction throughout a particular zoning district but which if controlled as to number area location, relation to the neighborhood would preserve the intent of this ordinance to promote public health, safety, and general welfare. It is special for a reason. It is not something that the applicant is necessarily entitled to, they have to meet standards. The burden-shifting here, each side essentially, under the Manteo Zoning Ordinance has the burden of production and the burden of persuasion. As to, for the applicant, the standards ensuring that the standards are met that the ordinance lays out. For the opposition, the burden of production and persuasion to say even if they have put on some evidence about those various standards, there's evidence contrary to that competent material, substantial evidence, that you legally then if that exists can choose to deny the application if you don't feel it meets the standards of design, quality, impact, etc. That the purpose, the spirit, the intent of the ordinance and the different zoning districts are designed to fulfill. Under Section 3-8e, the ordinance says that you must deny this application, if the application is incomplete or if completed as proposed, the development will not comply with one or more requirements of the ordinance. So, if it's established, that if it's done as proposed, they're not going to meet one of the requirements, you must deny it. It may deny it, this is section 3-8f, if the applicant has not met the requirements of the ordinance. I'm not sure how that differs, I would say that probably also means you must deny it. But two alternatives there under may deny are that is not in conformity with the land use plan or the latest guidelines for development or it's not compatible with the area in which it is located if developed. There's a little bit more language and there's a couple more points. Those are the key ones that I would submit for you to focus on. The B-3 Entrance District then has some additional standards that have to be met. This is where the proposed development is supposed to be in B-3. This is Article 9 and this is mandatory. All proposed development in B-3 zone shall:

1. Maintain or enhance the public health, safety, and welfare.
2. Maintain or enhance the value of adjacent property or it has to be a public necessity. If you decide it's a public necessity, it doesn't have to maintain or improve, the balance it's going to be one of the two that you decide.
3. It's got to comply with the general intent of the B-3 zone for physical development in the area.
4. It's got to contribute architecturally to the traditional village-like atmosphere of the historic town.
5. It's got to comply with all other regulations contained within the ordinance.

So, given that the essential standard of review that you've got to keep in mind in determining whether to approve or deny this. Let's talk about traffic first. The testimony from Mr. Hennings was that the proposed design, the proposed improvement in the TIA was a safety problem. Creating that gap is going to create a blind left turn that with an at speed lane behind it. Interestingly, what was led into evidence and Mr. Overcast reported the response of DOT, was to say exactly what Mr.

86

Hennings just testified to. No, we don't want you to do this gap because that's going to create a lane behind it that's a safety problem. Completely endorsed what Mr. Hennings said. Mr. Hennings also made some recommendations in his report, one of which was to create a right turn and then a U-turn later, that was one of the alternatives that Mr. Hennings came up with. What's important here is that the applicant has not come up with any solution to this problem. They've not put on any evidence that solves this issue. It's only noted that it's going to create an issue and maybe they'll figure out with DOT what's going to happen in the future. Will that be acceptable to the town or not? I know Commissioner Clissold has talked about the importance of working together with DOT but these are things that need to happen prior to the approval not after. One thing that was discussed in the last hearing, Mr. Overcash testified that they did a 50/50 split between the office and retail. Retail having a much higher number of trips per day than office generates and they split at 50/50. I'm going to take the microphone and if you could bring up my presentation. I'll walk over there.

*(Attorney Petesch approached the smartboard. He had the proposed plans for the development displayed on the smartboard.)

Attorney Petesch: So, we have ultimately seven buildings here A B C D and E are first floor retail two stories above it residential. Under B-3, housing above commercial, it can only exist if the first floor is retail so all of these buildings have to be retail. These buildings are all three stories designated commercial, they could be office or retail. The first floors of all of these come to approximately 18,000 square feet of retail room. All six floors of these combined come out to 18,000 roughly so if you look at it from that standpoint if all if these buildings were all 100 percent office, then you would be looking at a roughly 50/50 split but that is the best case scenario and I think that that is what that TIA represents is the best case scenario for what could happen coming out of this. But if the first floors of these are both retail and the second floors are office then it changes and this ends up being somewhere around 23,000 or 24,000 square feet of retail and only 12,000 square feet of office and that would substantially change the trip per day that get generated and move down Russell Twiford.

(Attorney Petesch returned to his seat.)

Attorney Petesch: Mr. Overcash's testimony in the TIA also focused primarily on the fact that this is only going to add a two or three second delay to the folks on Russell Twiford having to come out of that subdivision and any other people that are traveling out and trying to turn left or right but that's not the point here. The point isn't what is the delay that gets created by this, the point is what is the safety of the people that are turning out of there and that was not addressed. The only competent testimony made about that was from Mr. Hennings. With respect to stormwater, Mr. Anderson testified extensively about that. I would like to hand up illustrative portions of the Town of Manteo CAMA Land Use Plan Update 2007.

*(Attorney Petesch hand out illustrative portions of the Town of Manteo CAMA Land Use Plan Update 2007.)

Attorney Gray: I'm going to object. This is evidentiary and evidentiary was supposed to be submitted during the evidentiary portion of the hearing, not during the attorney argument.

Attorney Petesch: This is the town's own document and I'm submitting it as a reference during my arguments. This is not anything external evidentiary that needed to be brought in during that time.

Attorney Gray: It's still a piece of evidence that you are submitting for the trier of fact for these four or five people to review and make determinations concerning it. It is evidentiary and as such should have been presented during the evidentiary portion of the hearing.

Attorney Gallop: Mr. Gray, would you agree that if it had been submitted during the evidentiary portion of the hearing that it would be admissible? That they could take judicial notice of it without any particular testimony?

Attorney Gray: Since I have not looked at the CAMA Land Use Plan of 2007 since I probably saw it in 2007. I would want to compare this because this is obviously not the entire document. It is culled pieces and you and I both know that one of the joys of culling pieces of documents is you can cherry-pick parts of it that are really good for you and leave out parts that are not good for you. So, to answer your underlying question, I can't answer it. But the objection probably would have occurred at that point in time, saying okay submit the entire and then you can pull out those pieces you wish to.

Attorney Gallop: Mr. Mayor, I would recommend overruling the objection pending Mr. Petesch's use of the document. Whether it's factual or using it similar to an ordinance in terms of providing the policy perspective of the town.

Mayor Owens: All right based on my attorney's advice, I'm going to move that we object.

Attorney Gallop: Go on Mr. Petesch.

Attorney Petesch: On the first page, which is page 45, this indicates areas of environmental concern. You can see that in that portion of the intersection of 64 where the subject property is. The property to the immediate east is green, that is considered Salt Brackish Marsh. On the following page 49, this figure is the Coastal Regional Evaluation of Wetland Significance and that same area is in dark purple, under the legend, that's identified as exceptional significance. The next page was traffic counts taken from 2000 to 2002 and 2004, I would just note that that southbound portion of 64. bypass, I believe is the portion that we've discussed here today most effectively the backup there would block Russell Twiford all the way back in 2004. It was 20,000 trips per day, as a quick math on the back of the napkin, means that if you just use 16 hours out of the day as being responsible for most of that would be 1250 trips per hour. Would note on the next page, page 84, I've highlighted Coastal and Upland Wetlands. Wetlands preservation is a high priority for CAMA and the Town of Manteo. Salt and brackish marshes, which is what we just saw that portion next to just east the adjacent property, east of the proposed development. Salt brackish marshes in particular with developable land with a premium in water quality being threatened, wetland protection is critical. Then, on the next page, water quality conceptual plan. Again, you have a portion here that is delineated as coastal wetlands next to it. Just to confirm that that is what it is. So we do have serious environmental concerns here with potential effects of how this property is going to impact those wetlands. The testimony from the civil engineer at the last meeting was and I'll go back up here.

(Attorney Petesch got up and approached the smartboard again with the proposed plans for the development)

Attorney Petesch: Go to the next page, which is the grading and drainage plan, sheet two. That all of the stormwater from the impervious surfaces of these roofs and the parking area, which is by the way listed as proposed asphalt pavement, is what all of this is asphalt pavement. It was all collected and stored in two basins. One, I believe, over here and the other here and all that was routed through this dotted black lines to this one point here. Where it's released over some rip wrap and then would flow to the east right into the wetlands. It is also as a sworn testimony confirmed that the storage required is one inch. The first one inch of runoff and that the storage provided is the first 1.02 inches of runoff.

(Attorney Petesch returned to his seat.)

Attorney Petesch: With respect to Mr. Anderson's testimony, the issue of credibility which you have the responsibility of judging the credibility of all of the witnesses that have appeared before you. I believe that his credibility in terms of what's happening on his own property and in that neighborhood compared to what's happening here was very deftly brought into the consciousness of the commissioners. I would say whatever was done on that property is not relevant to what's happening in the choice that you have to make here today and it's up to you to decide whether his testimony about the impact contaminants, the importance of protecting wetlands, and environmentally sensitive ecosystems is competent substantial material in your decision-making process. Conversely, when it comes to property values, you'll have to weigh the same in terms of conflicted interest and bias with respect to Mr. Gupta's testimony about property values. I do want to, again, the town's owned, this is a Town's own zoning ordinance Article 17 on stormwater.

*(Attorney Petesch distributed the Town's own zoning ordinance Article 17 on stormwater.)

Attorney Petesch: In the interest of time, I won't go through all of it. I think it is important to note on the portion of intent there on the front but if you'll turn, well I guess to the next page, under design and standard details, Section 17-4b. I just want to point this out where it clearly says the town may but is not required to accept stormwater management plan that fits the states standards. You have the discretion to conclude that it's insufficient. There are here some criteria under 17-5 that says these plans for all developments must meet the following criteria so then we fall back into if it doesn't meet the standards of the ordinance you have to deny it. I would point out number four is to use drainage and hydrology as a design element the basic concept for stormwater management in utilizing LID is low impact development to design, implement, and manage so that the volume and rate of stormwater movement from the site will be the same both before and after the project implementation.

(Commissioner Mann entered the meeting.)

Attorney Petesch: It goes on to describe the different ways that you can do that the tools I would just point out briefly, that the tools that the ordinance provides are not being utilized in this application from what I can tell.

(Mayor Owens stepped out of the meeting.)

Attorney Petesch: But the important part of this is on the back, 17-7 general performance criteria the following requires a minimum runoff volume retention for stormwater management performance subsection one storm water runoff volume generated by the new site development or redevelopment shall not exceed the pre-development site volume for the first one and one half inches of total rainfall depth, this only does 1.02. I also would note that in the 2006 CUP that Mr. Gray introduced into evidence earlier. First, a quick aside that under point 1 on page two, that project included inclusionary affordable housing. That is one criteria that's very important to distinguish the two, which means that this application is completely different has to be evaluated without any consideration to this prior approval. It has no bearing on it but relevant to what our conversation is on stormwater, if you look on page three number five, stormwater the town requires that the first one and one half inches of storm water be held on the site. Property values is an issue here. It's something that unless you find that this is a public necessity, the applicant must put on competent material substantial evidence with respect to property values and that they have to either be maintained or enhanced. Mr. Gupta by his training and background, I could not really object to his being counted as an expert but the testimony that he provided is incompetent. Expert testimony has to be based on data on factual information. There was no factual information that formed the basis of his opinion and therefore it must be rejected. There were no comps, there's no data, and his methodology was not even identified. One of the considerations that the special use permit requires is conformity with the Town's Land Use Plan and Design guidelines.

*(Attorney Petesch handed out the Town of Manteo Design Guidelines to the Board of Commissioner and Attorney Gray.)

Attorney Petesch: These are a few pages from the design guidelines.

Attorney Gray: Again, I will object to this in the sense that this is going to be evidentiary. It should be submitted during the evidentiary portion of the proceedings.

Attorney Gallop: I'll wait for the mayor to return to give him a recommendation. Mr. Petesch, I can have another copy for the Mayor.

Attorney Petesch: I'm sorry.

(Mayor Owens returned to the meeting room.)

Mayor Owens: Y'all waiting on me?

(Various responses yes.)

Mayor Owens: There was silence in the room all of a sudden.

Attorney Gallop: Mr. Mayor. Mr. Petesch, has asked to make this a part of his presentation on his arguments. Mr. Gray, has made the same objection that he made previously to the land use plan provisions.

Mayor Owens: I don't like it but I'm going to go and do it. This thing is 16 years old. That's what we're dealing with, I think it was done earlier than that but I can say for the sake of fairness. I'm going to approve it.

Attorney Petesch: I did look through the proposed comprehensive plan that is I think in its second draft and I actually have a couple of pages from that that I was going to introduce but out of deference to Mr. Gray since that has not been adopted. I will not attempt to introduce those at this time.

Mayor Owens: I'm going to approve this so go ahead.

Attorney Petesch: So on the page 46, the first page as you turn this over, it does discuss, I highlighted on parking Subsection D, which talks about small clusters. This is in between those two examples, one of the examples on the left is disfavored, the one on the right is favored. I think this is in between but they certainly not have not nailed the design of clustering this parking area. More importantly, under Subsection E, it suggests a five-foot hedge of evergreen shrubs or vine should separate sidewalks from parking, that does not exist. It says surfaces should be at least eighty percent permeable. I pointed out earlier that that parking lot is designed as asphalt. (Subsection) F discusses bicycle parking and access, I have looked I may be wrong about this but I'm not aware of any bicycle facilities that are proposed on the plan. Again, it reiterates under Subsection K, on page 47, that the majority of on-site parking should be behind buildings. I think that probably has been accomplished here. But more importantly parking lots should be permeable surfaces, that's not been done here. Without handing anything up, I will also refer to the land use plan, the current one, and previously that was from the design guidelines. In the land use plan, on page 50, it talks about the high-level 30,000-foot look at how to apply and consider these types of developments. It states each part of Manteo has its special qualities, its history, its sense of identity. These guidelines, the land use plan, can only be successful if they encourage those who build and rebuild within Manteo to follow their traditions. This is not only through attention to detail but in keeping within the spirit of the town so that the end result is more than the sum of the parts. It goes on to say each building within one district should fit the architectural context not only of its own district but also adjacent districts. Each act of building should contribute to the overall sense of enhancement of the character of Manteo in sense of place, community, and its identity. Those factors, those qualities are missing from this application. There has not been testimony or any supplemental evidence presented that address these points. In fact, I don't believe anything to this point now has addressed the land use plan, conformity with the land use plan, where we've got design guidelines. Finally, with respect to compatibility of the area, we've talked about traffic. We've talked about stormwater. Those both go to it. Also, point out another thing, that the R-5 designation next door which is the subdivision, one of the qualities of the built environment is that light levels should be kept as low as possible. That language is also in B-3, remember, was one of the criteria that fit the built environment as it's described in B-3. One thing that will clearly be an issue here is the fact that you're going to put up major office space. While in retail and while residential usually has blinds and curtains and people turn out their lights at night. I would submit that office lights, retail lights, often stay on all the time. So, the exterior lighting of this project is governed by your zoning ordinance. It has that full cut off and that's great but it's about three stories of two big buildings of office that could have office lights that stay on inside and there's no requirements about how that should be shielded and that glare

managed. So just another thing, that hasn't been addressed in this application that should. So, in closing, so point out special use permit is special. And you're giving somebody some an entitlement to develop, what is above and beyond, what the base rights are.

(Attorney Petesch went to the smartboard to read an excerpt from the August 3rd Board of Commissioners meeting minutes.)

Attorney Petesch: Mr. Gupta testified back in August, at your August 3rd meeting from the minutes, quoted from the minutes. SAGA planned to do a First-Class Community. They understand that they have to work with the town and go through the Architectural Review process in the Manteo Way. Later in that same document, page seven first of the minutes page eight, SAGA respectfully requested approval of their special use application based on the facts that they do meet all the rules, they agree to all the conditions set by the planning board and the B-3 District promoting mixed-use village concept and he wanted to add their intention is to do a First-Class Community.

(Attorney Petesch returned to his seat.)

Attorney Petesch: I would submit that the evidence and testimony that has been presented to you does not support a conclusion that this is going to be a First-Class Community. It has taken a long time to get to this point. There have been many revisions, many holes in this application that have had to be filled. As a psychology major, one of the things that impressed me the most one of my professors was he said the thing that you can take to the bank is the best predictor of future behavior is past behavior. What you have here is an applicant that has not done a first-class application, presentation, and so it cannot be expected that this will be a first-class project. With all due respect, I don't mean to impugn him personally in any way. It's just a reality that what has been presented here. When you talk about a stormwater management system next to a wetlands that is 0.02 higher in inches than the minimum required by the state. They didn't even catch the fact that your ordinance requires it to be 1.5. Their traffic plan is insufficient. What about the plans for the development itself? For a residential property, not to have any open active space no recreational amenities that I could see included. There's no inclusionary housing so it's not filling important need in the community. There's little passive open space that's being provided. I'm not sure about the bike facilities and it doesn't have a pervious parking surface. I believe that on behalf of my clients, we have certainly met our burden of production and the burden of persuasion. There is ample evidence, it's competent material substantial, on which you may base your decision. I respectfully request that you deny this application. Thank you.

Attorney Gallop: Mr. Gray.

Attorney Gray: Thank you. I've been told to put this near me (the microphone) but I always consider the fact that I tend to speak a little loud. First on behalf of all of us that's here, we do thank you. This has been a very long drawn out process and you've been very attentive.

Mayor Owens: Loud is good.

Attorney Gray: Well since, I'm half deaf, it's necessary in my viewpoint. Again, we do thank you and not just on behalf of myself. Now, we're going to go with two microphones. All right, ma'am thank you. (Town Manager Dickerson provided another microphone to Attorney Gray's table.) I think Mr. Petesch gave you a very impassioned closing. But I want to focus more on what the evidence is that was submitted to you. Because that's what this is a quasi-judicial proceeding, where you have to look at the evidence that was submitted. First, we have an initial burden of proof. There's no question, we have to demonstrate the things that Mr. Petesch told you. We've demonstrated to you that we meet your ordinances. Your own staff in their submittal to you has said the site plan provided meets the standards of the ordinance. The applicant has acknowledged the staff Land Review Committee comments and made appropriate updates/responses. You have received expert testimony from a traffic engineer. I want to distinguish because this is important. You received a report and the first several pages of that report, first three pages, are in fact, apparently, the work of Mr. Hennings. Basically, those are a critique of some mathematical issues he had. But the part of this that says small sample size, absence of COA traffic, all of those are actually prepared by Mr. Anderson and attached to this. It's not the work of the traffic safety engineer. The second part of this, the traffic safety engineer did testify that he is not an expert regarding traffic studies. That's projecting future things and you have a traffic engineer who specifically testified concerning this project and the items that this project will do. Turning briefly to what the substance of his report says one, they collected new turning movement counts at the state intersection during late August so our volumes reflect this tourist season. They added Marshall Collins Drive intersection to their report at the request of DOT. That the Midway Intersection, which is not something that our project interferes with, that is a problem that this town has in all candor. The site traffic, that's traffic on our site, is projected to increase traffic at the signalized intersection by only two percent during the build-out peak. That by striping Russell Twiford into three lanes an inward, a turn left, and a turn right, the average delay increases, based on their study, only two to three seconds, one thousand one, one thousand two, one thousand three. Later testimony came in and they gave you all these things about accidents but they didn't give you anything about the accidents that actually occur at Russell Twiford Road. In our rebuttal, we advised you that those traffic accidents are approximately 10 in five years. Now, don't get me wrong, any one accident is not good. But you can't drive on any road and come to any intersection where it's not likely that at some point in time, there may not be an accident. We're not so bold as to tell you that, there's no concerns about traffic. I live here. I know what the traffic is like. I just did one of these projects, not a mixed use like this, up in the Town of Duck. You think you have traffic on a Friday and or a Saturday, try Duck in what their traffic counts are. The point ultimately is this, we've shown you that with that simple change, we're reducing down and not going to have any significant impact. The bottom line is, if you put anything on that property there's going to be some additional traffic, that's just a fact of life. One of the things, I brought to your attention, is that this project could have gone forward with 44 units, you may have wondered why did I bring that up. It could have gone forward with 44 units, which is an increase in traffic. It was approved in 2006 or 2008, I can't remember, I'm getting old, for 34 new residential units. Now, I know that's a long time ago, but the point I'm making to you is, this type of a project has already been approved, could have been approved for later. My client decided to reduce down the volume in this development project in order, partially, to reduce some of those potential concerns. I know that there's some concerns about values, there is only one piece of testimony, before you and that is this project will not have any appreciable impact on values. If they honestly thought that it would, I would have expected the people who were against this project to bring forward someone to testify to say so. They didn't.

Again, you have to look at what is substantial material competent evidence. In looking at this stormwater, stormwater to me was an interesting aspect. The expert testimony by the only engineer, who could testify concerning stormwater, was that it met your requirements. Again, your staff indicated it met your requirements and that it met state standards. Even their own witness acknowledge that this met state standards. Mr. Anderson acknowledged he was not an expert in traffic, in values, nor stormwater. Now, I will give him this, I have no doubts that he is an expert in runoff, in pollutants. You may have wondered, why did I submit you a copy of the plat of the Peninsula. If you still have that exhibit, would you put it in front of you for a second. If you will, look at the original plat of the Peninsula and look at Lot 29. The lot that is owned by Mr. Anderson, you will see a dot dot dash line that is his easternmost boundary on that subdivision plat. If you look in front of Lot 23, you'll see it delineates the shoreline as of a particular date 1997. I specifically asked Mr. Anderson, well did you put a bulkhead in? Did you in fact put some backfill in? He was truthful and honest and said yes. Lot owners do that to protect their property. But you have a gentleman saying to you I'm protecting my property, I'm putting a bulkhead up, and I acknowledge that I have a system that takes my stormwater overflow and puts it into the same sound area, the canal system. That doesn't make him a bad person, I'm not implying that. What I am implying is, when you look at where he's coming from, which is don't do this, it's near my property, he's approximately 200 feet away. He said previously that water would pond on his cul-de-sac. What he's done is saying, well don't put anything over here because I want what I have and I don't want something to be near me. Unfortunately, towns and counties, hear the word NIMBY all the time, Not In My Backyard. I do also want to read to you a couple of points in your ordinances. Sometimes when Mr. Petesch was reading, he would give you part but not all of the language and I think it's important that you hear the entire language. Section 3-8 dealing with special use permits subparagraph E, subject to subsection F, the town commissioners shall, in my world that's a mandatory issue the requesting special use permit unless they conclude based upon information submitted at the hearing that:

1. The requested permit is not within its jurisdiction. I don't think there's any question, we're in your jurisdiction.
2. The application is incomplete. Staff has indicated it's complete. You've heard nothing saying it's not complete.
3. If competent, if completed as proposed in the application, the development will not comply with one or more requirements of this ordinance, not including those applicants not required to comply with, under the circumstances specified in a particular article, non-conforming situations. We're not a non-conforming situation.

Attorney Gray: But it goes on further even, if the town Commissioners find that the application complies with all other provisions of this ordinance, they may still deny the permit if it concludes based upon the information submitted to hearing that:

1. The applicant has not met the requirements of the ordinance; or
2. Granting the permit will not be in conformity with the town's land use plan or the latest guidelines for development. We are in compliance. That's what the testimony is competent and material as submitted to you.
3. The proposed use will not be compatible with the area in which it is to be located if developed under the conditions specified in the ordinance and those additionally required

by the town commissioners. You set the rules. That's what all towns do, all counties do, you set the rules of what we can do and what we have to do.

Attorney Gray: We've shown through the testimony of our engineers and our other experts that we meet all of those rules. Again, staff has indicated that we meet those rules. Having said that, as Mr. Petesch also indicated to you, the burden shifted to him. He was obligated to submit material substantial evidence of a point. And that's where I don't believe you heard any. You heard a safety engineer indicating that there are safety concerns on a particular road. Sorry, there's a safety concern on every road, period. Right now, even if we don't build, we built nothing. The left-hand turn out of that development project has some concerns, period. You've already had, what I say, 10 accidents in five years, not a huge volume but there's always safety concerns anywhere on a road. What we've demonstrated is we're not exacerbating those to any significant degree, we've shown you that our stormwater system meets the state's standards. We do and as such I would respectfully request that you grant this application that has been submitted to you. And allow us to proceed on, as far as, what's it going to look like in the Manteo Build Way. A lot of those things occurred not at this level, but as things progress, we have to comply with all your rules and ordinances. That's our obligation. The final point to sort of speak to what Ms. Wickstrom brought up being the DOT and not having that. I've done enough of these to know that DOT very frequently, doesn't want to issue the letter until, the town or county has said what they want to do because there's no point in them agreeing to a particular design thing if you turn it down. So, it's not infrequently, that I am sitting here telling you I wish I had the letter, I wish I had the letter, I don't. But that's not unusual but let's look at it for a second, if in fact, you approve this development project and we don't get DOT approval, guess what happens. We got to come back to you because the project as designed DOT won't approve. Now, no offense, you're great people. You've been very understanding to everybody here but I prefer not to be coming back but again DOT controls that issue, we don't. Unless you have a lot more pull than I do, I can't get DOT to move anything very quickly. I won't say anything other than that concerning them. Thank you for listening to everybody here.

Attorney Petesch: May I have two minutes for rebuttal.

Attorney Gallop: No. I think he had the burden of proof and he gets the last argument, just like it would be in a case in court. So I think we're done unless, there's some reason for the Board to reopen the evidentiary portion. All right not seeing anyone who wishes to do that. We will close the hearing portion and it will come back to you for deliberation. My perspective is you've heard from two very competent attorneys about the arguments and the positions of the parties. They've both agreed that Mr. Gray's client have the initial burden of proving that they meet all of the requirements of the ordinance and standards for special use permit. That burden then shifts to Mr. Petesch's clients to refute that evidence, if it's brought forward. In some cases, you end up, as the court of appeals has shown, where you only have one side. Where they meet the requirements, you don't have any choice but to issue, if they have evidence that supports meeting the requirement, that you don't have any choice but to issue the permit. In the case, where there's two, you get to balance that evidence that they've provided and that they've provided on contested facts. The things that they agree on, they agree on, but the things that they don't agree on, you get to take into account. The credibility of the witnesses, the witnesses analysis if they're experts, and you get to make a judgment decision on which side of those contested facts, you agree with or don't agree with. Ultimately, we're trying to decide, as they have pointed out a number of the things do not matter,

but one is the standards of the ordinance, which include to maintain or enhance the public health, safety, or welfare, to maintain or enhance the value of adjacent property, or be a public necessity to comply with the general intent of the B-3 zone for physical development in the area, to contribute architecturally to the traditional village-like atmosphere of the historic town, and comply with all other regulations contained in this ordinance. Those other regulations would be most likely, your dimensional regulations that are related to mixed-use over retail in the B-3 District. You can discuss it, you can have someone make a motion to make a decision. I've already closed the hearing. The other part, you can make a decision tonight. We could come back at another meeting and you could make a decision then. You can do either. If you wish to talk about it, you can do that. If someone has a motion to make to approve it for whatever reason and said that it meets the standards and why then that would be appropriate. If someone has a motion to deny it that would be appropriate.

Commissioner Clissold: I have a few questions I guess for Summit. Is that over?

Attorney Gallop: I think we'd have to reopen the evidentiary portion. He'd have to testify under oath again and you'd have to have the opportunity for Mr. Gray and Mr. Petesch to re-examine him. And probably provide arguments again. We can do that if you'd like to do that, but to ask Mr. Gupta questions at this point, I think that's what you would need to do.

Commissioner Clissold: I mean, how's the Board feel? I just think there's a couple...

Attorney Gray: From the applicant side, we have no objections to a limited reopening and I will not have any further cross.

Commissioner Clissold: It's nothing that should be in depth, it's just simple. I know this has been going on forever but I just want to try to make sure we got everything confirmed. So in my calculations coming up with the site from 2006, I know this is probably not correct Summit, but you've got almost, and I can't read some of that small writing, but roughly 27,000 square feet of, what I see, commercial. It doesn't say retail commercial, it just says commercial. Is that somewhat in the neighborhood?

Mr. Gupta: I think that's accurate, yes.

Commissioner Clissold: Okay, so I guess what I want to feel confident is, if this is approved tonight, that we don't have an application in a year and a half, that you've decided to turn that commercial into more housing. If that happened, which that would be your decision to come in front of the Board to ask, but that also changes the parking calculations. I just want you to be aware of that. I'm hoping that, I think the whole county is open to housing. Long term, is what I think you had said apartments, and I think that's doable. You're saying 22 units, so you got 22 units and 20 something thousand square feet of commercial. I think the last time we had discussed, you couldn't commit, and that's fine, on what your intentions were. Was it retail, is it office space, or are you just going to leave it sit there until an idea comes up, that hey, I might put in 44 more units?

Mr. Gupta: So our intention is to follow the ordinance and all the rules. It's not to come back to ask for more apartments, but again I would have to go through a process and come to the Board, it's not

something we can just do. If the Board wanted to put a condition on, we're going to follow the ordinance, no more than half of it could be retail and those other buildings had to be office. I just can't define, it's this ice cream shop or it's this bookstore. That would be the next step but I am certainly open to any conditions that would make the Board feel comfortable on that.

Commissioner Clissold: Well personally, I mean, I don't mind, if it's commercial or if it's retail or whatever. I just want to be assured and this Board be assured and the Peninsula will be assured that if it's approved tonight, that you don't come back for 22 or 44 more. I think 22 units depending on what you do with the retail or commercial, has a lot to do with the traffic. I would possibly, and I know it's a big expense, to put in that permeable asphalt. I know that helps and I know it's a big expense and I'm not going to tell you, you don't have to answer that.

Mr. Gupta: We would certainly consider that and that's something that we wanted to meet the ordinance, the stormwater, but again these are things that we would be happy to consider. This will come in front of you many more times as it goes through. I could just make a commitment on that. I can even say that would be very open to adding additional pervious materials.

Commissioner Clissold: I would be very interested to see the recommendations of the DOT review and its approval or not approval. I know what you're saying that it's hard to get things pushed along sometimes and I understand that they don't want to do it unless this is approved so those are the only questions I have.

Attorney Gallop: Anyone else have any questions for Mr. Gupta.

Commissioner Wickstrom: I don't have questions but are we going to have discussions.

Attorney Gallop: We're going to come back. We've gone back into the evidentiary portion now. So, if there are any other questions of witnesses that anybody wishes to ask now would be the time to do that. Mr. Petesch, did you have any questions?

Attorney Petesch: I do have quick follow-ups. To reference the original question, was to whether the 2006 application had 27,000 square feet of commercial, is that correct?

Commissioner Clissold: Don't quote me on 27,000. I can't see this little writing.

Attorney Petesch: The current application has approximately 38,000 square feet of commercial retail office space, isn't that correct?

Mr. Gupta: I believe so. I don't have it in front of me. Yes. I do believe so, yes.

Attorney Petesch: Okay, so it's substantially more than the 2006 application. You testified a moment ago that if this SUP (Special Use Permit) was approved that you would be coming back before this Board many more times. What specifically were you referencing?

Mr. Gupta: I believe that once we come with a formal site plan. We'll be coming back before the Board.

Attorney Petesch: My understanding and I defer to staff on this, is that this is the last discretionary decision in which the Board will have any input after that it's all administrative and as long as the applicant meets the objective standards, the minimum objective standards, then it cannot be denied.

Attorney Gallop: Any other questions? Okay, we'll close the evidentiary portion of the hearing again. It's back to discussion among the Board members.

Mayor Owens: Can I suggest, without the attorneys, that we put it on the January meeting? So that the Board can have time to discuss it. Because if we make a decision tonight, it is going to be a snap decision on things we've heard today. That would be very unfair to everybody. Regardless of your mind, I think I know, how I'm reading you all. I would suggest that we take time for ourselves to discuss it among ourselves or not discuss it among ourselves but at least give it a little running room to see what goes. I personally it's been going on too long for everybody. We need to finish it up one way or the other which I'm totally open-minded. I would like to suggest we table it until say the first meeting in January and make a decision but it's up to the Board.

Commission Stetson: Just a quick legal question. I thought we weren't allowed to discuss this outside of the hearing. The class we took at UNC that guy said don't discuss it.

Attorney Gallop: You probably shouldn't discuss it outside of the hearing. But that doesn't mean that you can't wait another meeting to digest three meetings worth of evidence and the application of that evidence to the standards in the ordinance. One recommendation that I would have, and it's something I've done when I've been in a position more of Mr. Gray or Mr. Petesch's position, is to ask that if you do continue, if you do look at a different date, is to have them provide you with a proposed order, ahead of that date so that you can go through it and look at what they have proposed as evidence and findings. You can develop whether or not you agree with them or whether or not you don't. The problem here tonight is that you've heard argument from both of them and it's hard to remember everything that you've heard over three meetings. It's hard to put all that together in one place and providing a proposed order or something like that would be something that would give you all that road map to look at. It may not be what you ultimately decide upon but it would give you an easy road map to determine where you want to go. That would be one way to do that.

Mayor Owens: Well that's what I'm finding. I don't care either way if you decide to vote on it tonight it's up to the Board. I could care less. But I think it was in all fairness to everybody, all the evidence or whatever you lawyers call it, I don't know what you call it. But we've heard some things tonight, we haven't heard the other two meetings. We need to discuss it but if you don't want to that's all right too. I just don't care, I just suggest fairness for everybody that we take time and make sure it's done right.

Mayor Pro-Tem Selby: I will say I'm really concerned about retail space. I think it's possible that it needs to be defined because retail space it may create more parking. People probably parking on the side and I just don't think it's fair to the Peninsula citizens that we have the retail space open. That's just my opinion. I don't particularly like that retail space, what you're going to put in there? Is it going to cause more traffic, more customers, things like that. So, I'm very concerned about that.

Commissioner Stetson: Are we diving in? Okay. A couple questions. So the stormwater thing, so on the top of your stormwater plan it says 1.02, is that right?

Commissioner Clissold: We are out of the evidentiary hearing.

Commissioner Stetson: So then I'll ask everybody here and our lawyer, our ordinances say 1.5 right here.

Attorney Gallop: I've seen that it wasn't something that I had looked into tonight. My expectation was that this was a state managed stormwater project due to the size of the lot. But I haven't investigated that. There is a different program when the lot is a certain size, the state issues permits rather than the town.

Commissioner Stetson: Okay. I wanted all the legal clarity on this because that's our role, we serve. The land use plan. How is that legally binding? I keep hearing that brought up in compliance to the land use plan, what's the weight compared to the ordinances? How much should we put into our consideration?

Attorney Gallop: What the court of appeals has said is where the ordinance requires the conformity with a comprehensive plan, the listing of the use as a special use permit is prima fascia evidence. It's prima fascia evidence that it complies with your plan. Now, what they haven't done clearly, is delineate whether or not you can produce evidence that refutes that prima fascia case. In the case that references this, they have conflicting language by calling it a prima fascia decision, when they should have just said it doesn't apply. In the next sentence, they say it doesn't apply so you can't look at it because it changes all the time. It's not objective, it's legislation that can happen outside of the ordinance making process so it doesn't have the same level of legal status as an ordinance does. But the case isn't clear so if they had said that it was a final determination that you could not use a land use plan consideration then that would answer the question but by using the term prima fascia evidence that just means that by definition, they've met their standard on that. So, they at a minimum would have to produce evidence that it was inconsistent with the land use plan. The same thing applies to the question of compatibility with the area in which it's located which is the other provision under Section 3-8f. Both of those, the court of appeals has the Supreme Court might have rule on that one but the courts, the appellate courts, have ruled that you meet the you meet the Prima fascia case for those standards, if it's listed as a use in your list of uses. In this case, the use that they're pursuing is.

Commissioner Stetson: What is the definition of traditional village?

Attorney Gallop: You'd have to go with the dictionary definition unless it's defined somewhere else in the ordinance. Which I'm not aware of. If it is it's not defined in the ordinance than the dictionary definition of traditional village would be, and of course you'd apply that to that being the traditional village atmosphere of this town.

Commission Wickstrom: It's so confusing about where we're at. Are we discussing? Are we going to make a decision? I don't feel like we've like voted on that, if we're going to do it now or we're going to do it later. So, I'm kind of confused.

Attorney Gallop: No one's made a motion to do anything different so I think people are just talking at this point.

Commissioner Wickstrom: So it's a time for discussion.

Attorney Gallop: It's up to you, it's up to the Board or the mayor.

Mayor Owens: A motion is going to always be in order with me. Then we'll see if it was voted up or down.

Commissioner Mann: I don't have anything to add. In my mind, the only decision I really have is not about, beauty is in the eye of the beholder, so as long as it meets the standards or doesn't meet the standards, to me that is the issue on my mind. I won't say which way I'm leaning or not but that's the only thing I'm considering in my mind.

Commissioner Wickstrom: I guess I do think the words in our ordinance matter. As the former chair of the planning board, I can tell you that I have read through every single one of these that comes before us and I tried to interpret what they mean. I guess what I'm trying to say is that in this section, it says all proposed development in the B-3 Zone shall maintain or enhance the public health, safety, and welfare. Given what we've talked about this evening, I don't feel confident that with the added traffic, even though we've had two different experts talking about it. There is another part of this that I think we all feel and that is, we live here. I know what the traffic is like on Twiford. I am there several times a week so I know that there's a problem there. Folks can say whatever they want and I'm not sure I got the full picture on that. That's why I asked about the Department of Transportation. It seems to me to make an approval now, when we haven't even had an opportunity to read that. It feels uncomfortable to me, I feel uncomfortable. I am concerned about 131 parking spaces. How many extra drivers there will be? What time of day when they will be? And as you said, Sumit, you don't know what the businesses will be. How will we possibly know that? It does affect and have an impact on the traffic and the congestion in that little tiny road called Twiford. I think it was Mr. Overcash suggested that Manteo go ahead and figure out how to make the traffic flow better. Well does that mean while we're living with a new development and trying to figure out what those impacts are and living with that on a daily basis and then after that fix the roads? That somehow doesn't make sense to me. It makes sense that we provide all the people who live there and the people who would visit with an opportunity to maintain and enhance their public health, safety, and welfare. I'm uncomfortable. I'm not sure we have met that wording in our ordinance given what I've heard here and what I've personally experienced.

MOTION: A motion was made by Mayor Pro-Tem Selby and seconded by Commissioner Clissold to move this to January meeting, part of the reason is we got all this today. So, we can have time to digest it and come back and be fair, we got a lot of new information today, and was approved by the following vote: Ayes: Mayor Pro-Tem Selby, Commissioners Mann, Stetson,

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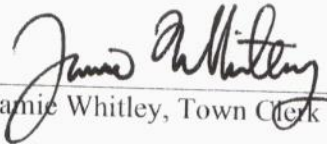
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Clissold, and Wickstrom. Nays: None. Absent: Commissioner Collins. **Motion carried unanimously.**

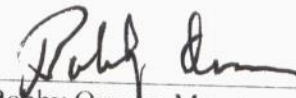
There being no further business to come before the Board or other persons to be heard, Mayor Owens recessed the meeting until 6:00 p.m. today at 4:47 p.m.

This the 7th day of December 2022.

ATTEST:


Jamie Whitley, Town Clerk




Bobby Owens, Mayor